Governmental Protection of Labor's Right to Organize

Summary of evidence introduced at a hearing before the National Labor Relations Board bearing upon the factual basis of the National Labor Relations Act and the reasonableness of the regulations embodied therein

NATIONAL LABOR RELATIONS BOARD
DIVISION OF ECONOMIC RESEARCH

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National Labor Relations Board — Division of Economic Research

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NATIONAL LABOR RELATIONS BOARD

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The detailed work of planning, summarizing, and editing the material presented in this bulletin has been done by David J. Saposs, George S. Wheeler, A. L. Wirin, Frederick P. Mett, George Brooks, Jean M. Paton, Jacob Karro, and Louis R. Becker.

"A further hearing was held before the Board in Washington, D. C., on April 2 to April 8, 1936, inclusive, at which time there was introduced into the record on behalf of the Board oral and written evidence tending to lend further support to the findings made by Congress in Section 1 of the Act, and tending to show the need for, and the practicability and reasonableness of, the method adopted by the Congress for dealing with the problem. The oral testimony was received from persons generally recognized as experts in their respective fields, who qualified as such before giving testimony; and the written evidence was prepared from authoritative sources. The staff of the Board, under its direction and close supervision, has summarized and rearranged this evidence in the form of a bulletin, which is being issued concurrently with and as a supplement to this decision, and which is hereby made a part hereof as if incorporated herein.

"In issuing this bulletin, the Board does so with the realization that the treatment of the various subjects dealt with therein is not inclusive, nor does the Board suppose that because the evidence summarized in the bulletin was received in a hearing held pursuant to Section 10 (b) of the Act, the conclusions stated in the bulletin are conclusive upon the courts as provided in Section 10 (e) of the Act with respect to other findings of the Board. Rather, the Board offers the bulletin for the information and assistance of the courts and for others who may desire to have in convenient form some of the learning which has been gathered during the years in the various fields covered by the witnesses." [1]

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[1] From the decision of the National Labor Relations Board in the *Matter of the Crucible Steel Co. of America,* Case No. R–25, 1936, p. 2. The evidence referred to was submitted at a joint hearing in the cases of the Crucible Steel Co., Wheeling Steel Corporation, and Jones & Laughlin Steel Corporation, and the oral testimony appears in full in the printed Transcript of Record in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* in the U. S. Circuit Court of Appeals for the Fifth Circuit, No. 8088, 1936.

Page references hereinafter appearing, preceded by the letter R, relate to the official report of the joint hearing.

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PART I

EXPERIENCE AND OPINIONS OF EXPERTS

I. UNSETTLED LABOR RELATIONS RESULTING FROM DENIAL OF THE RIGHT OF EMPLOYEES TO ORGANIZE AND TO BARGAIN COLLECTIVELY

A. INEQUALITY OF BARGAINING POWER BETWEEN EMPLOYERS AND EMPLOYEES

1. General recognition of the fact of inequality of bargaining power.

Characteristic of modern industrial relations, according to the consensus of opinion among economists and labor experts, is the extreme disparity between the bargaining power of the individual worker and that of his employer [1] (R. 228, 327, 773–774).

This fact has been generally recognized by the public, by legislatures, and by the courts. In *Holden* v. *Hardy* (169 U. S. 366, 397), the Supreme Court of the United States said:

> The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees while the latter are often induced by fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases, self-interest is often an unfair guide and the legislature may properly interpose its authority (R. 230–231).[2]

2. Equalization of bargaining power by collective bargaining.

The fear of discharge is the chief cause of this inequality in bargaining power. It precludes the employee from rejecting terms of employment, which, in the unrestricted exercise of his judgment, would be unacceptable. Another limitation upon his effectiveness as a bargainer is his financial inability to get expert advice and counsel, such as is at the command of his employer [3] (R. 231–232).

These restrictions upon the exercise of fair judgment in considering terms of employment are effectively removed only by organization and collective bargaining [4] (R. 231, 326). It is this fact which motivates workers to organize into unions [5] (R. 326, 774).

"Now the purpose of collective bargaining is to put the two groups that have to buy and sell labor on an equality so that each one can have the same kind of competent people to make the employment contract or the conditions for the employment contract" [3] (R. 142–143).

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[1] Testimony of William M. Leiserson, John A. Fitch, and David J. Saposs.

[2] Testimony of William M. Leiserson. The same opinion is expressed by the Supreme Court in other cases (*American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209), and by a number of official boards inquiring into problems of industrial relations: U. S. Industrial Commission of 1898 (Board exhibit 10, infra, p. 74); U. S. Anthracite Coal Strike Commission of 1898 (Board exhibit 11, infra, p. 76); U. S. Commission on Industrial Relations of 1912 (Board exhibits 12, 13, infra, pp. 79, 81).

[3] Testimony of William M. Leiserson.

[4] Testimony of William M. Leiserson and John A. Fitch.

[5] Testimony of John A. Fitch and David J. Saposs.

Thus, in bituminous coal mining, the chief advantage to workers from the practice of collective bargaining has been that "they approach their employers on more nearly equal terms than they possibly could approach them any other way" [6] (R. 355–356).

B. RECURRENT PERIODS OF WIDESPREAD INDUSTRIAL STRIFE RESULTING FROM DENIAL OF THE RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY [7]

Recurrent periods of great labor unrest in the various basic industries of the United States have resulted from the efforts of workers to organize for collective bargaining and the opposition of their employers to such organization (R. 768). In such cases the workers' only recourse has been to strike (R. 774).

1. Labor's first major effort to organize—1886–87.

The extraordinary strike activity of 1886–87 was the culmination of the efforts of labor, newly introduced to the factory system, to organize for collective bargaining. In these 2 years there were, respectively, 1,702 and 1,503 recorded strikes, in contrast with the 5 immediately preceding years, in which 695 had been the greatest annual total. According to estimates of the Department of Labor, 601,469 workers were involved in the 1886 strikes (R. 712–714).

The chief reason for these strikes was the refusal of the employers to deal with the union organizations. These refusals left no choice to the workers other than to go out on strike. "* * * Most of the strikes were spontaneous strikes, sort of an assertiveness on the part of the workers, who felt the need of an organization to protect their interests and to join the first organization that came to their attention, which happened usually to be the Knights of Labor * * *" (R. 713–714).

It was during these years that "the workers had suddenly become conscious of their status and had begun to organize. Most of the workers who were active in labor organization and in strikes during this period had not been members of labor organizations before, and therefore the prime issue was organization for the right to carry on collective bargaining, which the employers, of course, were resisting" (R. 713).

In 1886 the offensive was largely on the part of the workers who had just been organized and who were demanding union recognition. In a great many cases they succeeded in securing recognition. The offensive was taken by the employers in the following year, who felt themselves by that time sufficiently well prepared to break the relations that they found expedient to enter into with their employees the previous year (R. 715).

The following are some of the major strikes in the 2-year period, 1886–87:

(*a*) McCormick Reaper Works strike, Chicago, 1886 (R. 715).

(*b*) Southwest Railway strike, 1886, which tied up all the railways running south and west of St. Louis (R. 715).

(*c*) Knitters' strike, New York, October 1886 to May 1887, involving 20,000 knitters (R. 716).

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[6] Testimony of John A. Lapp.
[7] Testimony of David J. Saposs.

(*d*) Coal handlers' and longshoremen's strike, New York City, January to February 1887, involving 20,000 workers (R. 716).

(*e*) General strike, May 1, 1886. This strike was the outstanding strike of the 1886–87 period, involving 198,450 workers. It is popularly known as the 8-hour-day strike, but the real issue was the right to organize for collective bargaining (R. 716).

(*f*) Meat packers' strikes, 1886–87. Two strikes took place in the meat-packing center of Chicago, one in 1886, which was won by the unions, and another in 1887, which was won by the meat packers. These strikes in the meat-packing industry "practically crippled the whole industry" (R. 717).

2. Labor's reaction to industrial expansion, 1901–5.

During the period 1901–5 a total of 14,505 strikes was recorded, in a large proportion of which "the major issue was the right to organize for collective bargaining or for union recognition, as it is technically known" [8] (R. 725).

The following is the number of strikes, by years:

1901	3,010
1902	3,240
1903	3,648
1904	2,419
1905	2,186
Total (R. 718)	14,505

The major strikes of this period were:

(*a*) Machinists' strike, 1901, involving 58,000 workers (R. 721).

(*b*) The steel workers' strike, 1901, involving 46,000 workers [9] (R. 721).

(*c*) Anthracite coal strike, 1902, involving over 100,000 workers [10] (R. 721).

(*d*) Meat packing strike, 1904, involving 49,600 workers directly, and some 12,000 indirectly (R. 721).

(*e*) Teamsters' strike, Chicago, 1905.

3. Industrial disputes in the war and post-war period, 1916–22.

"This is another one of those periods of intensive and extensive activities, organizationally, on the part of the employees of the United States, and we find in this period a very large number of strikes" (R. 725).

For this period the number of strikes was as follows:

Year:	
1916	3,755
1917	4,436
1918	3,344
1919	3,630
1920	3,411
1921	2,385
1922	1,112
Total (R. 725–726)	22,073

[8] See Board's exhibit 46, infra, p. 105, for analysis of strikes by major issues.

[9] See also infra, p. 62.

[10] "The commission is led to the conviction that the question of the recognition of the union and of dealing with the mine workers through their union was considered by both operators and miners to be one of the most important involved in the controversy which culminated in the strike." Report to the president of the Anthracite Coal Strike Commission in the 1902 strike. See excerpts in Board's exhibit 11, infra, p. 76.

Complete strike statistics covering number of employees involved are not available for the years prior to 1919, but in 1919 the Bureau of Labor Statistics of the Department of Labor began collecting such data. From such data the following information can be gleaned: During the year 1919, 4,160,348 workers were involved in strikes; in 1920, 1,463,054; in 1921, 1,099,247; in 1922, 1,612,562. Thus for this period of 4 years there is a record of over 8 million workers having been involved in recorded strikes. Since the record is not complete, there were undoubtedly a large number of workers actually involved (R. 726).

"These were the workers that were directly involved in strikes (during the above-mentioned 4-year period), and it does not include the workers that are always indirectly involved in the sense that, as industry is tied up, other occupations and other industries and other services also cease to function.

"So that we had here during this period a most extraordinary accumulation of miscellaneous strike movements which undoubtedly very vitally affect the movement of commerce in the United States" (R. 726–727).

A great many strikes during this period, especially after the World War, were due to the open-shop movement sponsored by the employers' groups (R. 729).

The major strikes of the period were:

(*a*) Meat packing strike, 1922, which lasted about 6 weeks and involved a great many workers. In the Chicago stockyard area alone 45,000 men were directly involved.

"* * * during the war the workers in the stockyards, including the meat-packing houses, organized, and, through the intervention of Secretary of War Newton D. Baker, they established a machinery somewhat similar to what has been known as the impartial chairman machinery * * *.

"* * * that machinery functioned up to this strike of 1922, when the owners of these big meat-packing companies declared an anti-union policy and refused to deal with the union any further."

The refusal of the meat packers further to recognize the authority of the arbitrator at the head of the impartial chairman machinery precipitated the strike of the meat-packing workers (R. 730–731).

(*b*) The Atlantic coast shipping strike, 1921, in which the International Seamen's Union and the Marine Beneficial Engineers' Union were jointly involved. The issues of the strike were the questions of union recognition and of wages (R. 732).

(*c*) Strikes in the needle trades. During the 1916–22 period one strike occurred in the men's clothing industry involving 40,000 workers and lasting well over 5 weeks, and another in the ladies' garment branch of the clothing industry involving some 60,000 workers (R. 732).

(*d*) The New England textile strike (R. 733).

(*e*) The electric manufacturing industry strike (R. 733).

(*f*) The coal miners' general strike, which included both anthracite and bituminous coal miners and involved half a million or more workers (R. 733).

(*g*) The steel strike of 1919.[11] "The steel strike of 1919 was again a general strike of the entire industry. It involved at its peak over 350,000 workers directly and, all in all, according to the estimate of the United States Senate committee investigating the strike, about 500,000 workers" (R. 735).

(*h*) The railway trainmen's strike, 1919, and the railway shopmen's strike of 1922 (R. 926).

4. Recent period of labor unrest, 1933–35.

During the period 1927–32 there were not, in any one year, more than 1,000 strikes. The following table shows the number of strikes and employees involved for the period 1933–35 (R. 743–744):

Strikes—1933–35

Year	Number of strikes	Number of employees involved	Man-days of idleness
1933	1,562	812,137	14,818,846
1934	1,856	1,353,608	19,306,650
1935	1,898	1,141,363	[1] 15,014,029
Total	5,316	3,307,108	49,139,505

[1] Incomplete figures.

Among the major strikes in this period were the following:

(*a*) The New York Shipbuilding Co. strike, Camden, N. J. This strike involved directly 3,088 workers and lasted from May 11 to August 27, 1935. It was caused by "the refusal of the New York Shipbuilding Co. to recognize the union, * * * which is known as the Industrial Union of Marine and Shipbuilding Workers, as the exclusive bargaining agency for the workers employed by the company" (R. 744–745).

(*b*) The textile strike of 1934, involving 309,500 workers. The major issue of this dispute was the right to bargain collectively (R. 757–758).

(*c*) The Pacific coast lumber strike, 1935. The main issue of this strike was again union recognition[12] (R. 760).

(*d*) The Pacific coast water transport strike and San Francisco general strike, 1934. "The strike occurred over a labor dispute between the longshoremen in San Francisco and the water-front employers.

"One of the prime issues in that strike was control of hiring halls, which is equivalent to what is ordinarily meant by union recognition, because the hiring halls were controlled by the employers, and nobody, of course, could get employment unless they were approved by these hiring halls, and the union demanded a voice in the control of these halls so as to protect its members in securing employment and against discrimination by the employers who were refusing to recognize the right of the union to speak for the longshoremen" (R. 762).

The longshoremen's strike lasted until October 12, 1934. The San Francisco general strike lasted a little less than a week. The latter strike was in effect "a protest strike in sympathy with the longshore-

[11] See also infra, p. 63.
[12] Board's exhibit 44, infra, p. 110.

men who were denied the right to organize by the employers" (R. 764).

(*e*) The threatened general steel strike, 1934. This threatened strike in the steel industry involved the issues of wages and the workers' right to organize. The strike "was averted by the President's personal intervention and meeting with the representatives of both sides and the appointment of the Steel Labor Relations Board" (R. 765–766).

(*f*) The threatened general strike in the automobile industry, 1934. This threatened strike came about by a refusal of employers to recognize newly organized unions for purposes of collective bargaining (R. 766).

"The President called the representatives of the unions to Washington, as well as the representatives of the industry; and after a number of conferences, the threat of a general strike in the automobile industry was averted—the President succeeding in averting that by the establishment of the Automobile Labor Board" (R. 766).

(*g*) The threatened general strike in the rubber industry, 1935. In rubber, a threatened general strike, centering in the rubber-tire branch in Akron, Ohio, "was averted by the intervention of the Secretary of Labor at the request of the President, and there again the representatives of the workers, through their union officials, came to Washington, together with the representatives of the industry, and the Secretary succeeded in securing their approval of a settlement which prevented the strike" (R. 766–767).

(*h*) The Aluminum Co. of America strike. This strike was also caused by a refusal of the employer (the largest aluminum-products manufacturer in the field) to recognize the union for collective bargaining. Settlement of the issues which caused the strike was made possible through the intervention of the Conciliation Service of the Department of Labor (R. 767–768).

(*i*) The Bingham Stamping Co. strike, Terre Haute, Ind. This was a strike in the enameling industry which led to a general strike in Terre Haute. It occurred "in the plant of the Bingham Stamping Co., centering again upon the idea of union recognition, and, because of the refusal of the company to grant this request, there was an unofficial general strike called by the workers * * *" (R. 768).

(*k*) Other major labor disputes occurring during the 1933–35 period were the Minneapolis teamsters' strike, the strike of Weirton Steel workers, and the strikes in the rubber and garment industries.

C. EFFECT OF STRIKES UPON COMMERCE[13]

1. Strikes obstruct commerce.[6]

When a strike occurs, commerce is stopped or heavily burdened. To that extent it constitutes an obstruction of commerce (R. 364).

"You obstruct commerce by unfair trade practices, which impose burdens in one way or another, but * * * you more directly obstruct commerce, when, through strikes, you stop the flow of commerce in part or in whole. Finally, in the case of unfair labor practices which actually result in disharmony which results in strikes, you directly affect commerce" (R. 365).

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[13] See also: Steel Production and Distribution as Affecting Interstate Commerce, infra, p. 60.

[6] Testimony of John A. Lapp.

2. The effect upon commerce of particular outstanding strikes.[7]

The southwest railway strike of 1887 "tied up all the railways running south and west of St. Louis * * *. It actually crippled all traffic. For a considerable time there was no movement of freight at all" (R. 715).

In the general strike of the same year production in all the major cities of the United States was tied up for from 1 to 3 weeks. It "was a general strike for all industries, so that production was tied up in all branches of industry * * *" (R. 716).

Both in 1886 and in 1887 strikes occurred in meat packing which "practically crippled the whole industry." There was very little production in either year and "hence, of course, very little shipment went into the yards or came out of the packing houses" (R. 717).

A strike of 100,000 anthracite coal miners in 1902 "tied up production in anthracite coal so that the consumers of that coal, located throughout the United States, found it difficult to obtain anthracite coal and had to rely pretty largely on coke and, to a limited extent, on soft coal" (R. 721).

The towns in the anthracite area, being entirely dependent upon the mines for their commercial life, "were seriously affected, and there was very little business done by the auxiliary businesses, like barber shops, groceries, and so on" (R. 722). The railroads, whose chief business in the area was the transportation of anthracite, lost a tremendous amount of business during the suspension of production (R. 722–723).

In 1905 a teamsters' strike broke out in Chicago, which, though it involved only 4,000 workers, "is regarded in the history of strikes as an exceedingly important and vital strike * * * because it tied up the people who did most of the hauling from freight yards and warehouses, and so on, crippling commerce in Chicago as well as commerce shipped out of Chicago" (R. 723). Manufacturing was as effectively tied up as shipping (R. 724).

The 1919 strike of railway trainmen affected the trains in and out of Chicago, New York, and other important yards, disrupting train schedules, seriously interfering with the movement of freight, and causing an increase in the number of accidents (R. 734).

The great steel strike took place the same year, involving the entire industry.

"Around the Chicago area—what is known as the Calumet district—the industry was practically at a standstill. In the Youngstown area the same situation prevailed (R. 735–736).

"The strike lasted 13 weeks. It was effective about 8 or 9 weeks and then began to peter out so that production continued again.

"In the Pittsburgh area there was some production because the skilled workers did not join in the strike; whereas in the other areas they did, so that steel production was pretty largely stopped. Of course, there were no shipments and no movement on that basis" (R. 736).

The Iron Age is "a paper intimately associated with the industry, that has the confidence of the employers in the industry, and might be considered a semiofficial organ of the industry, and therefore * * * thoroughly conversant with the general labor and

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[7] Testimony of David J. Saposs.

economic situation in the industry" (R. 737). It reported the following [14] regarding the effect on commerce of the steel strike of 1919:

> Though the steel strike, when launched proved to be far from the extensive thing the labor leaders predicted it would be, its general effect was to paralyze the iron and steel market. Not knowing just what they had to face, some mills directed their representatives to cease taking orders and under no circumstances to promise definite deliveries against contracts or specifications. Pig iron, quiet before the strike, only became more so (R. 738).

The same issue, under the title "Iron Ore", dated Cleveland, September 22, 1919, reads:

> The tying up of lake boats engaged in the transportation of iron ore is threatened. Lake seamen have voted in favor of a sympathetic strike, and a strike vote is now being taken by both cooks and firemen (R. 738–739).

Under the heading of Pig Iron, New York, it states:

> Business has taken a decided slump, consumers apparently awaiting the outcome of the steel strike (R. 739).

And under another heading, Finished Iron and Steel, under the same New York date line, there is the following:

> Few offers from consumers are being given serious consideration by selling agencies. What business has been taken is largely by mills which do not seem to be seriously threatened with strike curtailment of operations (R. 739–740).

In the following number,[15] under a Pittsburgh, September 26, date line, the following paragraph appears:

> Everything in the steel trade is subordinate to the strike, and neither producers nor consumers are making any real effort to do business.

A shipping strike in 1921 "tied up shipping from Maine to Texas—at one time actually tying up 300 vessels that ply along the coast" (R. 732).

The following year a general strike occurred in coal involving both the anthracite and bituminous fields. Production in anthracite was completely held up, and in bituminous, seriously affected (R. 733).

In September 1934 over 300,000 textile workers responded to the call for a general strike.[16] They were joined by 60,000 workers in the garment, mining, and hosiery industries who struck in sympathy with them (R. 757).

The report of the United States Board of Inquiry for the Cotton Textile Industry gives the following description of the strike:

> The present strike centers primarily around troubles in the cotton textile industry. Nevertheless, workers in the wool textile, silk textile, throwing, velvet, upholstery, and drapery industries, in the wool trade, and in certain parts of the hosiery industry have been called out (R. 758).

Earlier in the year a strike was called by the longshoremen in San Francisco. "The strike finally broke out on May 9, after long negotiation involving 6,000 longshoremen; but by this time it had extended to the entire Pacific coast, including Tacoma, Everett, Seattle, Olympia, Aberdeen, Vancouver, Astoria, St. Helena, Rayner, Portland, Marshfield, Bellingham, Los Angeles, San Francisco, San Diego, and Long View—the important points along the Pacific coast" (R. 762).

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[14] Vol. 104, no. 13.
[15] Vol. 104, no. 14.
[16] See Board's exhibit 43, infra, p. 109.

"While the strike first involved only the longshoremen, it spread to other maritime workers; and, on May 17, 8,000 seamen, including sailors, firemen, oilers, cooks, stewards, etc., struck in sympathy with the longshoremen, demanding, however, in addition to union recognition, wage increases, shorter hours, and better conditions.

"The President of the United States intervened and appointed a special board to mediate the strike. In the meantime, however, a general strike was called in San Francisco, tying up the complete commercial and civic life of the community and putting everything under the control and into the hands of the organized committee to handle the affairs of the city" (R. 763–764).

In 1935 the employees of the New York Shipbuilding Co. at Camden, N. J., went on strike. The delivery records of the Pennsylvania-Reading Seashore Lines [17] show that during the 109 days of the strike 3 railroad lines delivered to the company 47 carloads of interstate freight. In the 40 days immediately preceding the strike they delivered 142 carloads, and in the first 95 days after the strike, 341. These deliveries were shipped in interstate commerce from 16 States and included such items as coal, gas, oil, machinery, lumber, steel bars, beams, plates, pipes, wire chain, sleeping-berths, and airplane landing catapults (R. 748–750).

In April 1935 a strike closed down the General Motors' plant in Toledo, which manufactures transmissions for Chevrolet cars.[18] In a week the strike spread to the Fisher Body and Chevrolet plants in Cincinnati. The General Motors' employees in Cleveland and Atlanta had no work as a consequence, and later called a sympathetic strike. A great number of employees in other plants were laid off as a result of the lack of materials that should have been supplied by the striking plants (R. 750–751).

The effect of the strike on commerce in the automobile industry is shown by the following excerpts from the trade journal "Automotive Industries": [19]

DETROIT, May 2.—The strike at the Chevrolet plant in Toledo, now in its second week, with no definite indication of when or how it will be settled, to date has resulted in the closing of Chevrolet and Fisher plants in 5 other cities, with a prospect that the St. Louis plant, employing 3,200, will close this evening.

Meanwhile the crippling effects of the strike are fanning out over a wide area as suppliers receive stop orders on Chevrolet parts and materials * * *.

Assembly plants in Tarrytown, N. Y., Kansas City, Janesville, and Atlanta were closed by the management for lack of transmissions, laying off a total of 7,200 workers. Earlier in the week the Cleveland Fisher plant, which makes Chevrolet stampings, including turret tops, was closed by the company * * *. Between 8,500 and 9,000 workers were laid off in Cleveland. The Norwood, Ohio, plant, employing over 2,000 workers, was closed by strikers whose demands paralleled those at Toledo * * *.

Reports coming in indicated that the departments in suppliers' plants working on Chevrolet business had been forced to close or curtail operations. Among these are Kelsey-Hayes Wheel Co., which closed down its Chevrolet wheel line; the Murray-Ohio Co.; the Fort Smith (Ark.) Body Co.; Eaton Detroit Metal Co.; Trumbull Steel; Corrigan-McKinney; and Otis Steel. Toledo parts plants supplying to Chevrolet are also curtailing.

Union leaders are said unofficially to be boasting that by the end of the week all General Motors units will be affected by strikes due to the tying up of key plants * * *.

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[17] See Board's exhibit 41, infra, p. 113.
[18] See Board's exhibit 42, infra, p. 108.
[19] May 4, 1935, p. 589.

A conciliatory attitude has been taken by Willaim S. Knudsen, executive vice president of the General Motors Corporation, according to a statement which he issued commenting upon the closing of the Fisher Body plant in Cleveland as forced by the Toledo strike (R. 754–755).

With respect to the effect of the strike in Indiana, Automotive Industries [20] reported:

General Motors Corporation started operations Tuesday in its Muncie products plant (Muncie, Ind.), hurriedly equipped at an estimated cost of $600,000 for the manufacture of transmissions, after the Toledo strike cut off the supply of these parts for the Chevrolet and Pontiac divisions (R. 755–756).

Of the Pacific coast lumber strike, which took place in 1935, the Bureau of Labor Statistics reports: "Shipping and other affiliated industries were seriously affected" (R. 760).[21]

Other strikes took place in the automobile industry during the 1933–35 period, with similar repercussions on commerce (R. 756).

3. Recognition by business practice that strikes interfere with commerce.[22]

"* * * business practice has for a long time taken into consideration the fact that strikes do interfere with the movement of commerce, and therefore they make it a point pretty largely to include in their compliance clauses the fact that if strikes occur they are not bound to fulfill the contract" [7] (R. 772–773).

"There is a very common clause found in contracts for the sale of manufactured goods, that in the event of disruptions of the plant on account of strikes or labor disturbances, * * * (the vendors) cannot be held for violation of their contract" (R. 655–656).[23]

D. UNFAIR LABOR PRACTICES LEADING TO INDUSTRIAL STRIFE

The activities defined as "unfair labor practices" in section 8 of the National Labor Relations Act are essentially undemocratic practices "used to exercise control over the labor organization, * * * to take away the independence of representation on the part of labor groups and to bring them under control" [24] (R. 521).

Economists of national standing are unanimous in the opinion that these unfair labor practices are a major cause of industrial strife [25] (R. 107–109). They are also agreed that the elimination of these practices would tend to lessen labor unrest and to reduce the number of strikes (R. 106, 111, 178–179, 342–343). Among them are such eminent economists as Professor Millis, head of the department of economics of the University of Chicago and recently president of the American Economic Association; Professor Taussig, of Harvard; and Prof. W. Z. Ripley, formerly of the Harvard faculty [25] (R. 108).

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[20] May 11, 1935, p. 624.
[21] U. S. Bureau of Labor Statistics, Monthly Labor Review, September 1935, p. 656; see Board's exhibit 44, infra, p. 110.
[22] See also Board's exhibit 45, infra, p. 107, Strike Clauses in Contracts.
[7] Testimony of David J. Saposs.
[23] Testimony of Glenn Alwyn Bowers.
[24] Testimony of Ferdinand A. Silcox.
[25] Testimony of Edward Berman. The U. S. Commission on Industrial Relations, 1912, reported: "Looking back over the industrial history of the last quarter century, the industrial disputes which have been accompanied by bloodshed and violence have been revolutions against industrial oppression and not mere strikes for the improvement of working conditions" (Board's exhibit 13, infra, p. 81).
[26] Testimony of Edward Berman, John A. Lapp, William M. Leiserson.

Plans for industrial peace, such as union-management cooperation, are impossible where unfair labor practices exist [27] (R. 396).

The research of the Commission on Industrial Relations and the experience of the National War Labor Board indicate that legislation is necessary to prevent these practices [28] (R. 569–570). In steel particularly the existence of company police and of the company town system, with the consequent suppression of civil liberties, makes governmental intervention the only way to secure for the workers the free exercise of their rights to organize for collective bargaining purposes [29] (R. 289–290).

Accordingly, the first section of the National Labor Relations Act declares the policy of the United States to be the elimination of these causes of substantial obstructions to commerce by encouraging the practice and procedure of collective bargaining. The provisions it enacts to effectuate this policy are essentially the same as those of the Railway Labor Act, which dealt with similar problems in the railroad industry [3] (R. 198), and substantially identical with the recommendations of the Committee of the Twentieth Century Fund, which were made independently of the study of the problem by any person connected with the National Labor Relations Act [30] (R. 120–121).

1. The blacklist.

"Blacklisting consists generally in the establishment of a system by a group of employers, under which an employee who is discharged by one employer for whatever cause he wished, goes on the list so that the other employers are notified not to give him employment. That is the essence of blacklisting and it takes many forms" [31] (R. 544).

The form of blacklisting in general practice today is more subtle than the simple procedure of maintaining a list of undesirables which might be subpenaed and brought into the open. The modern form is a system whereby employers, through a clearing house or by direct communication with previous employers, make inquiries, often by telephone, about specific individuals. Information thus secured leads to the rejection of applicants, or the discharge of employees, whose previous records show union activity [23] (R. 651–653).

Many employers have established personnel bureaus to inquire into the industrial history of their employees and to carry out the blacklisting procedure. Since the expense of operating these bureaus enters into the cost of production and ultimately into the price to the consumer, it can be said that in effect the public pays for the use of the blacklist [23] (R. 547).

The Industrial Commission of 1912 found that the use of blacklists by employers "tended to promote unrest and dissatisfaction and, even more seriously, tended to create a feeling of desperation which in many cases led to violent and destructive conflict" [31] (R. 544, 546, 550–551).

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[27] Testimony of Otto S. Beyer.
[28] Testimony of Basil M. Manly. See also Board's exhibits 13 and 36, infra, pp. 81, 126.
[29] Testimony of Charlotte Carr.
[3] Testimony of William M. Leiserson.
[30] Testimony of Sumner H. Schlichter. For recommendations of the Twentieth Century Fund, see Board's exhibit 15, infra, p. 123.
[31] Testimony of Basil M. Manly.
[23] Testimony of Glenn Alwyn Bowers.

2. Espionage.[32]

OBJECT AND EFFECT OF ESPIONAGE [33]

The purpose of espionage is to supply information for blacklisting (R. 677).

"Q. Is it clear to you, Mr. Blankenhorn, from your numerous studies in this field, that the principal object of the so-called industrial espionage system is to keep track of the labor activities in labor organizations?

"A. To keep track of and to influence, and, if possible, to control (R. 699).

"Q. * * * the effect of the knowledge that such a system existed, on the mind of the average worker, would be to intimidate him from joining or assisting a labor organization, would it not, in all probability?

"A. That is it. Nothing creates a wider and more general fear than the belief that there is a secret system operating among them to identify those that are active in unions (R. 699).

"Q. What have you found to be the state of mind of the worker, or the reaction of the worker, to espionage and blacklisting and discharges resulting therefrom * * *?

"A. I hardly know of anything that in general deepens the resentment that arises in labor conflicts more than the feeling by the worker that there is a systematic secret espionage being practiced in his ranks, coupled with the threat of what are known as armed strike-breakers, usually from the same agencies that supply the espionage. The result is a great intensification of bitterness in case there is any sort of dispute.

"Q. Please state whether or not this bitterness which you described is a factor in or a cause of strikes.

"A. Yes" (R. 694–695).

FINDINGS OF THE COMMISSION OF 1912 REGARDING ESPIONAGE IN UNITED STATES INDUSTRY [31]

This Commission on Industrial Relations of 1912 in conducting its investigation found espionage prevalent throughout American Industry (R. 547–548). The practice of "the retaining of so-called detective agencies to supply what were known as undercover men, to work in the plants as though they were ordinary workers, to mingle with the workers, to report upon the activities both of individuals and of groups, and to advise the employer of any attempts to bring about organization, or to hold meetings for that purpose, and matters of that kind" (R. 548).

The Commission found in a great number of cases that the spies and detectives created unrest in order to create a continuing demand for their services (R. 548–549). It further found that the information secured by these spies was used by employers as a basis for discharging employees or discriminating against them because of union activities (R. 550).

The practices of espionage, blacklisting, and discriminatory discharges, the Commission found, "led to widespread unrest among the

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[32] See also Espionage in Steel, infra, p. 68, and Board's exhibits 38 and 40, pp. 163, 169.
[33] Testimony of Heber Blankenhorn.
[31] Testimony of Basil M. Manly; see also infra, p. 39.

workers, and, where a sufficient group found it possible to get together, it usually led to strikes and to a different kind of strike ordinarily from the strike that was common among well-organized industries. The sort of strike you get when you have had that condition of repression existing for a period of years is an explosive strike" (R. 550–551).

THE ESPIONAGE BUSINESS [33]

There are about 40,000 to 50,000 labor spies active in American industry today (R. 700). "The higher-paid men, those who you might say come up in the business, are those who make it a profession and not infrequently are found to be recruited from criminal classes. They have been in various forms of crime and they return to it; that is, a number of experts have criminal records * * *. Recruitment of ordinary stool pigeons is often accomplished through the insertion of blind ads in the newspapers" (R. 701). Men answering these ads have found themselves at such offices as the International Auxiliary in New York and the National Corporation Service in Youngstown, where they quickly discovered that they were desired for purposes of espionage (R. 702).

Among the better-known agencies that specialize in furnishing labor spies and strikebreakers are the following:

1. The Railway Audit & Inspection Co., and its affiliates.
2. The Central Industrial Service of Pittsburgh.
3. Corporations' Auxiliary.
4. International Auxiliary.
5. William J. Burns Agency.
6. A. A. Ahner.
7. Forrest E. Pendleton.
8. Baldwin-Phelps Agency.
9. National Corporation Service.
10. Pinkerton Agency.

Altogether there are some 200 such agencies in the United States, some of them with a continuous service of many years. The Pinkerton Agency has been operating for about 80 years and has been specializing in industrial espionage since the Civil War (R. 692–693).

3. Discrimination and discharge for union activity.

Although a "bit antediluvian compared with the modern personnel procedure", the practice of discharge by employers of workers for union activity is still prevalent today (R. 649). "It is a frequent practice among employers who have not attempted programs of industrial relationships, employers who do not have personnel managers, and employers who do not approach their labor problem from the standpoint of improving conditions." These represent a very large proportion of American employers [23] (R. 650).

Both the general experience of experts in labor relations and their studies of special fields lead to the conclusion that discharge and other forms of discrimination against workers for union activity have

[33] Testimony of Heber Blankenhorn.
[23] Testimony of Glenn Alwyn Bowers.

constituted a major cause of strikes and industrial unrest [24] (R. 105, 354–355, 468, 648–650).

In cases of industrial disputes "when the issue is whether or not a group of employees who have had no organization before but have tried to have an organization, and the employer is opposing it, then the usual thing is for the leaders to be discharged, or the committee that came to see the employer to be discharged or discriminated against. Very often very many of the strikes we have had in the last few years are because the whole plant went out to support those few—often thoughtlessly gone out, because they have not thought how they were going to be supported on strike and how they were going to live.

"But that illustrates the bitter feeling that they have and the resentment they have against discrimination against the leaders or active members, because they become so enraged and so fearful of their own job that a whole plant will walk out to support these few. Very many of the strikes have happened in that particular way that I have described. Take the big rubber strike (Goodyear Rubber Co.) that just happened. It started with a dispute in one little department—I think about 60 people being involved—and they could not somehow settle that dispute. Then, when they tried to get rid of those 60, the whole plant went out, and the city was tied up with all sorts of law and order problems" [6] (R. 205–206).

"* * * When the representatives of the employees, the active members, the committeemen, get their heads chopped off, as they say—that is, get fired or transferred or disciplined, or some other way—then every employee becomes frightened—frightened because he attended the union meetings, is sympathetic with the movement, and his head is coming off next. And that is what causes more bad relation than any other single thing that I know of * * *" [6] (R. 197).

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[24] Testimony of Edward Berman, John A. Lapp, Fred C. Croxton, and Glenn Alwyn Bowers.

[6] Testimony of William M. Leiserson.

II. SATISFACTORY EXPERIENCE WITH COLLECTIVE BARGAINING

A. IN GENERAL

1. Adjustability of disputes over wages, hours, and other working conditions, where the procedure of collective bargaining has been adopted.

It is the prevailing opinion of labor economists that strikes arising over substantive terms, such as wages, hours, and other conditions of employment, can be adjusted or prevented by conference procedure between representatives of both parties[1] (R. 776). Strikes in which the right to organize for collective bargaining is a major issue are, however, more difficult to adjust by conference or mediation[1] (R. 788).

"Q. (to Mr. Leiserson). Now, in terms of your experience in the men's clothing industry, what is your opinion as to whether or not this proposition is true, namely, that certain causes of disputes, like wage disputes and disputes as to number of working hours, can be conciliated or mediated, or compromised or adjusted, but that certain other causes of disputes, namely, interference by employers with the right of collective bargaining, cannot be conciliated or compromised but should be protected by law?

"A. * * * Of course, it is obvious that if you have a dispute over wages and disputes as to what hours should be worked, and things like that, there is no absolute testimony that you are entitled to 8 hours or 7 hours, or $25 a week or $30 a week. These are questions that people are willing to compromise on, and can compromise on, and if it goes to an impartial third party, an arbitration board, it is a question that they can settle in the light of comparable circumstances. So ordinarily it is said that those questions are arbitrable.

"But when the question comes up, 'Shall I have the right to join a labor organization, without interference by the employers?' or 'Shall I have the right to bargain collectively with the employers?' or 'Shall the employer have the right to determine conditions without interference by its employees?'—well, that is the question that is ordinarily called not arbitrable, because one side says, 'Why, that is a matter of principle, and if I recognize the union, I will be letting them run my business', and the union says, 'If we let the employer lay down the terms, then we have nothing to say as to what we will get for our labor.' These questions are questions of principle. Now, it is always on questions of principle that people go to war and kill each other * * *"(R. 146–148).[2]

"* * * If we have a threat of a strike now (on the railroads) it might be on a big fundamental question, like wages and hours, and we usually find we can settle those by arbitration or otherwise * * *.

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[1] Testimony of David J. Saposs.
[2] Testimony of William M. Leiserson.

"But if the issues involved were discrimination or discharge of men because they had joined the organization, or the question would be the right of the organization to represent them, we could not have settled those strikes" [2] (R. 207–208).

2. Desirable results of collective bargaining.[2]

Under collective bargaining the parties "deal with each other in a civilized and businesslike way, instead of a warlike way * * *" (R. 145).

"* * * most of the first collective agreements were set up in competitive industries, covering a large field, so that every employer knows * * * that every other employer is paying the same rate of wages as is written into the contract, and there is no chiseling by the other fellow's getting his labor cheaper. It equalizes labor costs, and that is one of the main advantages. The other advantage is that the innumerable disputes that are bound to come up, and they come up all the time, are settled in an orderly way and not by constant interruption of production. We know this interruption of production may be worth thousands of dollars, whereas for a few dollars this machinery can operate by settling it in a civilized way" (R. 145).

Collective bargaining results in benefits to the public also. The public gains by the orderly settlement of disputes without violence and without disruption of commerce. By peaceful adjustment the public is also saved the expense involved in strikes, which ordinarily enters into the cost of production and consequently into the price of the product, which the public ultimately pays (R. 145–146).

On the whole, collective bargaining results in an increased industrial efficiency (R. 224–227).

3. Enlightened management's desire for collective bargaining.[3]

Even industrial engineers who are usually in the employ of private employers have recommended to such employers that they confer and deal with their employees regarding working conditions (R. 621–622).

"Any employers' organization which has had an experience of collective bargaining on the level of that which has been described in the printing industry and in the garment industry rarely will return to individual bargaining, because they find in this machinery a systematic and organized means for settling what theretofore was a problem—or a continually recurring problem and one that could never be settled" (R. 643).

B. IN THE PRINTING INDUSTRY[4]

1. The Typographical Union and employer organizations in the printing industry.

The typographical union became articulate in this country in the form of a definite trade union in the 1850's, under the leadership of Horace Greeley. Today the International Typographical Union has a membership of about 75,000 (R. 503).

At a later date "the employers split into two groups within their major organization, * * * one called the closed-shop group and

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[2] Testimony of William M. Leiserson.
[3] Testimony of Glenn Alwyn Bowers
[4] Testimony of Ferdinand A. Silcox.

the other called the open-shop group. On labor questions these two groups voted separately through their own channels."

The closed-shop group is known as the Printers' League. It has its main strength in New York, in which one-fourth of the total volume of the nation's printing, and one-twelfth of the world's, is produced. It represents in that city about 300 employers and accounts for nearly three-fourths of the production. About 20,000 employees are affected directly and about 60,000 indirectly by the collective agreements made by the league for its members (R. 505–506).

2. Harmonious relations under collective agreements.

For many years collective agreements have governed the relations between the employers' association and the unions in the industry. They began to appear soon after the formation, in 1850, of the International Typographical Union. At present they include detailed regulations relating to wages, hours, apprenticeship, and working conditions, as well as a prohibition of strikes and lock-outs. They set up a machinery for the adjustment of disputes and avoid many strikes by providing in advance the terms under which labor-saving machinery may be introduced (R. 504–506, 512–513).

The adjustment machinery consists of what is called the "supreme court of the industry", a joint committee of 10, in which the employers and the union are equally represented. Over 95 percent of the disputes are settled without referring to an outside arbitrator, although where necessary such an arbitrator may be employed. The adjudications of the joint committee have been accepted without question by both sides (R. 507–508).

Operation of this impartial machinery for the adjustment of disputes would be impossible in the absence of a policy of collective bargaining (R. 508). For such machinery to function there must be a body to adjudicate complaints in which both employers and employees are represented. Each group must, therefore, have a truly representative organization, which is impossible where employees deal individually with employers or where employers attempt to coerce employees in their organizational activities (R. 508).

"Q. Again on the basis of your own personal knowledge of handling these things, not only in the timber and with the shipyards on the Pacific coast, but in the printing industry, with which you are intimately familiar, if all of these grievances and all of these disputes that are settled as a matter of routine within the industry when the proper adjustment machinery is set up—that is, collective bargaining and the negotiations that are carried on—if all of those disputes had to go to the courts * * * and be handled in the formal fashion by judges and lawyers, do you think that our courts are prepared to handle these things expeditiously, or nearly as expeditiously as they are handled by the machinery that is set up within the industry to do it?

"A. I don't think that the courts could handle it; and as a matter of fact, they are not even handling commercial cases. We set up an arbitration board in New York to handle our commercial cases, because we couldn't get action through the courts. We had a case of over $1,000 in New York, and it took us 3 years to get action through the courts, and so we established an arbitration board, and we took

out of the courts the handling of a great many of our commercial cases, aside from labor cases" (R. 528–529).

Employers who entered into collective agreements have found that the contracts were of benefit to them. Many of the plants are union plants "because they believe it is definitely beneficial." Some were originally unionized against the desire of the employers, but for the most part the collective bargaining structure has been accepted as a constructive influence in the industry (R. 515–516).

The issues of the right to organize and of union organization in the printing industry had, prior to the use of collective agreements, resulted in bitter conflicts between employers and employees. Since the event of the collective agreements these conflicts have, to a great extent, been eliminated. In 1919, however, a very bitter strike took place, which tied up the whole industry for about 8 weeks (R. 516).

"* * * the foundation for the strike was laid by the employers themselves, in that in 1917 they had a 5-year contract, and instead of making and reestablishing mutuality of interest in that contract by adjustment of wages, they tried to tie that contract up, in the face of a tremendous increase in prices and in the face of the fact that they themselves were going to their own customers and getting adjustments in prices.

"And they sat on that contract and enforced it from a heedless standpoint until it blew in the open. The action was taken by the group who were getting the lowest wages. The purchasing power of the dollar had shrunk to 40 cents. Employers had refused arbitration, because they said they had a contract and the union must keep it.

"The net result was that in September of 1917 one of the leaders of the union * * * struck a vulnerable spot and by direct action got an adjustment of wages of $6 a week. Other unions swung behind this organization, and a combined direct-action movement got under way, expressed in the form of withdrawal on the part of the local unions from their own international. In 1919 the international unions and those unions that remained with the A. F. of L. had to join forces to stop the direct-action movement" (R. 516–517).

C. IN THE GARMENT INDUSTRY[5]

1. Early strikes to organize for collective bargaining in the New York market, 1893 and 1911.

"* * * in 1893 there was an outbreak in New York resulting in a tie-up of the industry for several weeks, the busiest part of the year. * * * After a struggle for several weeks, highly important in a seasonal industry, a settlement was made, and I don't think that it resulted in an active union, but the strike did result in a union being established, not at all in control of the industry" (R. 410).

"* * * this union that had endeavored to form itself in New York in 1893 gathered new strength unto itself and new leadership, and in 1910 again, after a prolonged struggle, succeeded in establishing itself as an important factor in the New York market. In fact, that union came to an agreement with the manufacturers' associations of New York, which were formed to suppress this strike, to have union recognition and union working agreements. In those

[5] Testimony of Morris A. Black.

settlements it was stipulated by the New York manufacturers, and readily acceded to by the union leaders, that they would establish similar conditions in Cleveland in the shortest possible time; so the following year this same movement came to Cleveland and resulted in a strike in Cleveland that lasted 5 months, but was not successful * * *" (R. 413–414).

2. Uninterrupted peaceful relations in shops accepting collective bargaining after Chicago strike of 1911.[2]

In 1911 there was also a bitter strike in the Chicago garment market centering about the Hart Schaffner & Marx Co. After the strike this company entered into a collective-bargaining agreement with the union of clothing workers. "This agreement, which at first was for a year, and would sometimes extend to 2 or 3 years, but going on now from year to year, provides for a method of settling all differences." Since this collective-bargaining agreement was entered into "there have been no strikes, or very occasionally, in shops where a few men might stop, but no problem" (R. 127–128).

3. Adjustment machinery established in the Cleveland market after the strike of 1917.[5]

In 1917, when the war broke out, a number of Cleveland manufacturers were engaged in making soldiers' uniforms for the Government. During this time the union was actively engaged in organizing the Cleveland market. The union called a strike in all the factories in Cleveland, including those that were engaged in the war work. "That gave the War Department an active interest in it." The strike lasted for about 3 weeks and involved about 10 percent of all the garment works in the Cleveland market (R. 415–416).

The Cleveland manufacturers appealed to Secretary of War Baker to appoint an impartial committee to decide the issues involved in the strike. The Secretary appointed a board of referees, to whom all matters might be referred, either by the employees themselves, their representative, or the employers (R. 416–417).

A hearing was held before this board and an agreement was thereupon entered into between the Cleveland Manufacturers' Association and the referees, that "all matters that might be brought forward by workers in the industry, or by their representatives, were to be heard by the referees and determined according to their best and most fair judgment." The agreement resulted in the establishment of a perpetual board of arbitration consisting of disinterested and impartial representatives representing the public point of view (R. 417–418).

The board of referees was active in the garment industry until 1930. Some of its later members were Judge Julian Mack, Dr. Hollander, professor of economics at Johns Hopkins University, and Morris L. Cooke (R. 419).

A dispute "could be adjusted between the management and the individual, and if the individual was not satisfied with the adjustment, he could take it up with the shop committee, and the shop committee then took it up with the management" (R. 420). If the shop committee and the management "were successful in adjusting it, it went no further; if they were not, then the union members took

[2] Testimony of William M. Leiserson.
[5] Testimony of Morris A. Black.

the question up with their representatives, * * * and the manufacturers' association had a representative * * * and * * * (they) adjusted it between them. If they couldn't do anything with it, it came before the board of referees" (R. 420).

One of the results of the adjustment machinery was the adoption of a system of production which secured for the garment workers a greater continuity of employment (R. 434).

4. Subsequent employer-employee cooperation in Cleveland under collective agreements.[3]

A cooperative collective bargaining relationship arose in the Cleveland market as a result of the "bitter strife in the period immediately surrounding the World War and the determination on the part of the employers and the conservative leadership in the union to do away with that kind of undesirable relationship and to place their dealings on a cooperative level" (R. 579–580).

In the Cleveland garment industry "there was one collective agreement, representing the three or four branches of the employers * * * and also representing the units of the International Ladies' Garment Workers' Union * * * so that in effect there was one single representative agency on the part of the workers and a single representative agency on the part of the employers" (R. 582).

This agreement provided machinery for the adjustment of disputes, "but it was a simple procedure. Having in mind that the industry does not have the complexities of some others, and that in Cleveland, at the time, there was a high degree of confidence on both sides, and therefore no need of an elaborate negotiating machinery, we went through the simple procedure of giving notice and presentation of cases, first locally before committees, and then before the board of arbitration and the arbitrator who was brought in from outside" (R. 582–583).

The collective agreement prohibited strikes and stoppages during its term (R. 583).

A firm of industrial engineers was engaged by the unions and employers jointly for the purpose of bettering working conditions in the shops and for the purpose of getting production on a more scientific basis (R. 580). These industrial engineers, with the cooperation of the unions, set the production standards for the workers. Prior to the collective agreements the unions had complained of the use of time studies in the setting of production standards (R. 581).

Since the Cleveland garment market was in competition with other garment markets in the country, such as Chicago and New York, it became necessary to adjust wage scales downward, in order to keep the Cleveland market in such competition. This was made possible by the cooperation of employers and employees and resulted in the stabilization of employment in the Cleveland garment market by which the workers were guaranteed a minimum of 40 weeks of employment during the year (R. 585–588).

5. Peaceful relations under collective agreements in the Chicago market after the strike of 1919.[2]

A very bitter strike in the Chicago clothing market took place in the year 1919. A collective agreement had been signed between the

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[3] Testimony of Glenn Alwyn Bowers.
[2] Testimony of William M. Leiserson.

Hart, Shaffner & Marx plants in Chicago and the union of clothing workers, in 1911, after a bitter strike. Thereafter, industrial relations in these plants were unruffled. The rest of the Chicago clothing market was not covered by such collective agreements until after the strike of 1919. Prior to these collective agreements there were a great many strikes. "Now, since that time, so far as the employers and employees in the labor organization are concerned that have been dealing with each other and that are convinced that is the way to deal with each other, we say that while there have been innumerable disputes, those disputes have not been fought out on a war basis and have not been fought out by strikes. There have been civilized methods of adjusting and handling them" (R. 128).

6. Successful operation of arbitration machinery under collective agreements in the New York market after the strike of 1921.[2]

"The industry (in New York City) is made up of a large number of small subemployers that are really contractors. The employers, the real employers in the industry, find managing human beings too difficult, so they contract out the job of handling their labor by hiring contractors to do the work. * * *

"Now there are just thousands and thousands of them, and every year new thousands go into the business, and others go out. Now, under that kind of a situation, strikes happen very frequently. * * * The large number of strikes that you hear about in the clothing industry come from this contracting situation.

"There is an attempt to make collective agreements (in these contract shops). What happens is that a general agreement is made, and the agreement is with the main employer, that any work sent out to a contract shop shall be under the same conditions; * * *

"* * * it is very difficult to control and regulate the conditions. Now, attempts have been made to include them (contract shops) under agreements in another way, by saying that every contractor shall be registered as belonging to a particular employer, for an agreement has been made to prohibit employers from swiping contractors from each other. * * * That has not worked out very successfully.

"More recently they have organized a very strong association of contractors, so that the contractors can bargain collectively, too, and you have got then the manufacturers' association and the contractors' association and the employees' association, or union, and they try to standardize conditions on some kind of a civilized basis. It has a good deal of promise, but the actual operating conditions in the industry are so disorganized that you don't know how long that promise will stand" (R. 131–132).

A general strike in New York City in 1921 involved many thousands of clothing workers and tied up the New York clothing market for many months. It resulted in a collective agreement between the union and the New York Clothing Manufacturers' Exchange, setting up machinery for the arbitration of disputes through an impartial board (R. 132, 134).

Prior to this 1921 strike and prior to the collective agreement above mentioned, a great many strikes took place in the New York clothing

[2] Testimony of William M. Leiserson.

market. This was inevitable, for "as long as the employer insists that the business is his own; that investors invest money in it and have some say in it, but that labor does not invest anything in industry and therefore isn't entitled to have any say, but just take it or leave it; and the employer refuses to deal with any representative or organization of the employees and will not bargain with them and will not permit the employees to sell their labor cooperatively—you have a very large number of strikes that grow out of that situation" (R. 135).

The collective agreement between the Amalgamated Clothing Workers of America and the New York Clothing Manufacturers' Exchange removed as a cause of strikes the employer policy of refusing to bargain with employees collectively (R. 135–136).

Collective agreements in the clothing industry provide that there shall be no strikes or lock-outs during the term of the agreement. There have been no substantial violations of this provision in the New York market (R. 138). Where workers have violated the agreement by going out on strike, the impartial chairman has ordered them back to work and the union has enforced the order by imposing fines and penalties for failure to comply (R. 137).

The agreements, on the whole, have been well adhered to. The record shows that as a result of the impartial machinery set up by these agreements there has been a substantial decrease in the number of strikes in the industry (R. 148).

D. IN THE PETROLEUM INDUSTRY[7]

In the petroleum industry there are a great many collective agreements, some local in scope, some regional, and others national. Shell Petroleum Corporation and Sinclair Refining Co. are among the employers who maintain collective agreements with unions (R. 341–342).

"Q. What has been the experience of your board (the Petroleum Labor Policy Board) and of yourself as to whether or not these collective agreements that were entered into by representatives of the employees on the one hand and representatives of the employers on the other hand, * * * prevent strikes?

"A. Most of these collective agreements are comparatively new * * *.

"It would be hard to say definitely the results in statistical form, but the observation which I, as a board member, had was that it had a great tendency to allay troubles, and it was a means of determination of issues that arose; and in the agreements that were adopted throughout the country in which the Petroleum Labor Policy Board was made the final arbitrator or the mediator—I should explain that probably in 25 different contracts we were made the arbitrator or mediator—that scarcely in any case were we called upon to decide an issue—three or four arbitrations were held in the Shell Petroleum Corporation at Wood River, Ill., where we made a final decision, and throughout the other 25 contracts there were not half a dozen instances where the board was called in.

"In other words, the collective agreement worked so perfectly that there was no need for any final arbitration in the case" (R. 342–343).

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[7] Testimony of John A. Lapp. See also Petroleum Labor Policy Board, infra, p. 46.

E. IN THE BITUMINOUS COAL MINING INDUSTRY[8]

Throughout the Indiana-Illinois-Iowa bituminous area there are collective agreements between unions and operators' associations, the workers being effectively organized into several union groups and the operators into State-wide associations, all for the purpose of collective bargaining (R. 347–349).

These collective agreements are in writing and are published and widely distributed among the miners. They provide that for their duration there shall be no strikes or stoppages and that all disputes shall be settled by a system of arbitration. In two of the States an umpire is provided for, who is the final authority in the adjustment of disputes (R. 350).

"In the meantime, the work goes on; and if any party violates the agreement, he is fined a sufficient amount, so that it rarely happens that anybody ever actually interferes with production. I do not know of any instance where there has been any material interruption of work due to disagreement of the terms of the contract" (R. 349–350).

"* * * the experience of 40 years (of arbitration) has accumulated such a foundation of what you might call the common law of labor relations in that industry that practically every question that could possibly arise is settled on the basis of the existing experience and existing law" without strikes or lock-outs and practically without any interruption of production (R. 350–351).

These collective agreements ordinarily run for a period of 2 years, at the end of which period they are opened for adjustment (R. 354). In the adjustment of these collective agreements there are incorporated into the new contracts the umpires' decisions which have in the past become settled law. In that way the collective agreement is kept an up-to-date-contract (R. 352).

Collective bargaining in this industry has resulted in equalization of bargaining power, in higher wages, in better working conditions, and in a smaller working day for those workers who have been represented by unions participating in the bargaining (R. 355–356).

On the other side of the picture, where collective agreements are made, "the employer is freed from the risk of controversy during the period for which those contracts are signed, and he knows exactly what to expect * * * and he has contact with the leaders of the men, and he is able to work out harmoniously many things which otherwise he could not work out. I am of the opinion that the advantages are equal to the companies as well as to the employees" (R. 359).

The general public has also gained by the continued practice of collective bargaining. "Now the public can be assured that for 2 years, in the case of the coal industry of the Middle West, there is going to be peace and harmony and no interruption of trade in coal. They know in the case of * * * every industry that is affected directly there is going to be no interruption and that they can determine their business for a year or 2 years on the basis of there being no interruption of the trade in which they are engaged. I think that is the clearest advantage that comes to the public. The prevention of

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[8] Testimony of John A. Lapp. See also Petroleum National Bituminous Coal Labor Board, infra, p. 46.

strikes naturally is a great benefit to the public, since the public must suffer directly in every case of a strike" (R. 361–362).

Collective agreements in the coal industry have met with uniform compliance. "I have known of two or three instances where men went back on their agreements and struck, but out of all of the hundreds of instances of a similar character that have come to my attention, those were the only ones, and they were, as a rule, in these cases beaten. The employer has come to recognize that even the unions won't stand for the breaking of any agreement that is entered into, and they understand, too, that the public won't stand for it, and it has come to be a recognition on the part of the union men that I know that it is better policy to abide strictly by the agreements, even when these agreements are not all that they like" (R. 360).

F. IN THE RAILROAD INDUSTRY[9]

Since the enactment of the Railway Labor Act, with its provisions requiring collective bargaining, there have been no strikes of any importance, with the exception of one so-called illegal strike in which the men walked out contrary to their organization's orders and were sent back to work by the organization.

"All of the disputes, hundreds of them, thousands of them, are settled as the law said, in conference between the representatives of the carriers and representatives of the employees, duly designated as provided by this act" (R. 177–178).

"* * * and it was possible to reduce wages during the depression and restore them again on the railroads throughout the country when the period of recovery came on, in an orderly way, without strikes of any kind; whereas in all the other industries, practically, they had all sorts of strikes" (R. 178).

"Q. * * * Now, Dr. Leiserson, in terms of the actual experience upon the railways since 1926, * * * has actual experience demonstrated that the protection of this right (to organize and bargain collectively) by congressional action in the 1926 Railway Labor Act made collective action on the railways an instrument of peace rather than strife?

"A. There is no question about that, and the carriers as well as the employees would so testify. There is no question that the experience since 1926, and since the amended act of 1934, bears out the purpose that Congress had in mind of maintaining peace through these methods of promoting good will, I should say" (R. 208–209).

"Q. Is there anything in your experience which would bring you to the opinion that the experience of industries that are in commerce, or whose activities substantially affect commerce, would be different insofar as the recognition of this right of workers by law?

"A. No; I think the experience in the railway industry is just typical of the experience throughout industry where collective bargaining was developed, and you want to know there are very many industries that have had that experience * * *.

"As soon as the question of the employees' fundamental right as American citizens is out of the way, from that time on peaceful relations develop. It does not mean that no disputes arise; but

[9] Testimony of William M. Leiserson. See also National Mediation Board, infra, p. 47.

peaceful relations develop, and the questions in disputes begin to be settled in a businesslike way, as businessmen settle their own disputes among themselves.

"There is the right of workingmen to be considered businessmen in their own affairs.

"As soon as the employer recognizes that they have the right to be considered businessmen in their own affairs and won't just take arbitrary orders from a foreman or manager, from that time on you establish over a large part of the field of labor relations peace and good will and you eliminate the cause of strife" (R. 209–210).

"Q. Please state whether or not in your experience and the experience of the National Mediation Board you have discovered that an election by secret ballot is the device for the allaying of industrial unrest, or whether it is not?

"A. Well, certainly on the railroads * * * there is no question that an enormous amount not only of unrest but of disturbances of the operation and efficiency of property is avoided when we get the thing thus settled (by an election held by the National Mediation Board) once and for all.

"We often have the management say to us that they are not interested in the dispute because the law requires them not to be, but they would like to get the thing settled, and we run off the election and settle it for them" (R. 184–185).

"Q. Let me ask you whether or not, in your general experience with respect to elections in industry, other than the railway industry, your opinion is the same and your experience is the same?

"A. My experience has been the same whether it is in that industry or in other industries * * *" (R. 185).

G. UNION-MANAGEMENT COOPERATION[10]

1. The union-management cooperation plan.

The union-management cooperation plan is a system of "cooperation between labor, as represented by its freely chosen organizations and spokesmen, and the managements of the concerns that are willing to recognize and accept such cooperation, to the end that the * * * institutions in which the employees * * * work, * * * may improve their sales, their output, and may improve the conditions of employment, and increase the compensation, stabilize the employment, and in general discharge the responsibilities for which they were established to the public more satisfactorily than they would otherwise" (R. 368–369).

"In its broad sense, practically every industry that has established organized relationships with employees may be said to recognize and have applied the thoughts and ideas that underlie this arrangement between labor and management" (R. 369).

Union-management cooperation has been adopted in various industries throughout the United States. It has been tried in the railroad industry and has proved very satisfactory. It has also been tried in the machine-building industry and in the cotton-sheeting branch of the textile industry. In Canada union-management cooperation plans are in effect on the various railroad systems. In the

[10] Testimony of Otto S. Beyer.

United States and Canada approximately 150,000 employees of various types of industry operate under some form of the plan (R. 369, 386, 370).

2. Origin and growth of the plan.

The first union-management cooperation plan that may be said to be a definite, real, and practical plan was instituted in the Baltimore & Ohio Railroad Co. The origin of the plan is difficult to place. It was the result of a natural development, the groundwork of which was laid in the labor movement, which, through the expression of its leaders, "focused attention upon the opportunity for constructive work as far as labor organizations are concerned in the conduct of the industry" (R. 371–372).

In the case of the Baltimore & Ohio Railroad, the unions involved (the International Association of Machinists, the International Brotherhood of Boiler Makers and Electrical Workers, the Brotherhood of Railway Carmen of America, and the Brotherhood of Maintenance of Way Employees) were the initiators of the arrangements which resulted in the inauguration of the plan on that line (R. 372, 383).

It was first put into effect at the Pittsburgh shops of the Baltimore & Ohio in 1923. Just previous to the inauguration of this plan, a Nation-wide strike had taken place in the railway industry, and the atmosphere was an extremely strained and difficult one (R. 373, 401). The management felt that labor organizations tended to interfere with the smooth functioning of the plants. The first step to be taken to get union-management cooperation under way was, therefore, to convince the management that it was desirable to meet in conference with labor organizations and to settle promptly and satisfactorily all the petty difficulties which of necessity arise from time to time between employees and management (R. 325, 377). It was stated to the management that if it would "make a conscientious effort to clear up difficulties, the men in turn will be glad to respond by way of indicating to the management what it is that may be corrected or improved in the conduct of the plant itself" (R. 375).

"Now, the management, * * * when they were shown that such might be the results, were perfectly willing and went out of their way to work with the rank and file and with the spokesmen to clean up these petty misunderstandings, whatever they might have done, and having done so, the next step was to bring the rank and file—or the spokesmen for the rank and file—to bring them together, to determine what it was that they could do jointly to improve the performance of the plant in which they both worked" (R. 377).

Joint conferences were then held by representatives of the union and of the management, as a result of which union representatives went back to their various local lodges and "solicited from the rank and file * * * ideas as to what could be done to make this machine work better or to save some unnecessary labor or hardship, or to save some material, or to improve the kind of work that the man was doing." This procedure brought forth thousands of proposals and suggestions from the men. By the year 1928, at which time the union-management cooperation plan had been adopted over the entire system of the Baltimore & Ohio Railroad and found its way into other railroad systems, approximately 22,000 proposals or sugges-

tions of one kind or another had been made by members of the rank and file to the management, and approximately 85 percent of these proposals and suggestions had been put into actual practice by the management. It is estimated that up to the present time at least 100,000 definite proposals or suggestions have been made by members of the rank and file to the managements of the railroad systems in which union-management cooperation plans exist (R. 377–379).

3. Benefits of the plan to employees.

Union-management cooperation has resulted in the elimination of the petty misunderstandings between employees and management and has created for the employee a more wholesome atmosphere in which to work. It has resulted in the improvement of physical working conditions, such as safety, sanitation, and lighting. It has afforded the employee a greater assurance of regularity of employment and has obtained for him the establishment of higher standards of employment, vacations with pay, and wage increases. "It has given the employees a new reason for wanting to join and play a constructive part in the organizations of labor, and by that token, in the conduct of the railroad" (R. 387–388).

"It is my observation, and it has been my observation, that with the acceptance or with the resolution of the misunderstandings about the right of men to organize, the acceptance on the part of the management, for example, of the organization of men, the making and maintaining of agreements between such organizations, and, finally, the growing of those agreements into a general cooperative relationship, the purpose of which is to serve the public, have a very stimulating effect upon the rank and file in its enthusiasm, in its feeling of security, in its attitude—in other words, in its concept of the part, and the constructive part, that it is playing. It makes—as I like to express it—it makes for a genuine concept of citizenship in industry, and the employee does not feel merely as a wage earner who is there to get what he can for the few hours that he works, but he feels that he is playing a dignified, helpful, constructive part in a useful enterprise" (R. 397–398).

In 1926 the Baltimore & Ohio Railroad Co. agreed to divide the savings with its employees which had been accrued under and by virtue of the union-management cooperation plan. By that time this plan had resulted in a saving of between two million and four million dollars to the Baltimore & Ohio Railroad. Half of this fund was divided among the employees and distributed to them in the form of a wage increase.

"In Canada * * * as one of the rewards of cooperation the management of the Canadian National gave the men a week's holiday with pay, and they did it after mature consideration and realizing that it was worth while to do so, as far as they were concerned, and that it was only a fair division of the proceeds which resulted from this arrangement" (R. 403).

4. Benefits of the plan to management.

Among the benefits derived by railroad management by the institution of union-management cooperation plans are:

(*a*) Reduction of petty annoyances to a minimum.

(*b*) Improved railroad service.

(*c*) Increased efficiency of personnel resulting from regularization of employment.

(*d*) Improved shop economy and efficiency by utilization of practical ideas of employees.

(*e*) Stimulation of management to devise and introduce improved methods of shop operation, work planning, and the like.

(*f*) Improved morale.

(*g*) Increased prestige of the carrier.

(*i*) Increased confidence of the public (R. 389).

5. Benefits of the plan to the public.

"There is no doubt that the plan, because of the factor of greater safety and the greater concern on the part of the rank and file in the quality of service which the railroad renders, is a matter of decided public interest, and it is along that general line that the plan can be said to have justified itself from the public point of view. Benefits, therefore, that accrue to the management and the employees both redound to the public weal" (R. 390).

6. Resulting change in labor's attitude.

"Workers have no objection to increased efficiency just so long as they are not the ones to be penalized. The whole idea that underlies collective agreement is that these things which otherwise lead to misunderstandings be adjusted and regulated—the quetsion of wages and the question of hours—instead of being left simply in the hands of someone arbitarily to do with as they see fit. What labor wants is that those things be established by mutual agreement—likewise, economy and increased productivity.

"Labor has no objection to that * * *. But all that it asks is that there be an understanding as to how it shall proceed, and that labor, for its cooperation, benefit in the proceeds that result therefrom. Consequently, * * * it developed very early that one thing that had to be taken seriously in connection with this whole program, * * * (was) the stabilization or regularization of employment. It was not reasonable to expect men and women to take any interest in furthering efficiency, for example, if tomorrow somebody was going to be laid off. But it so happened, as the situation was canvassed, that there was a great deal of opportunity, if the management was willing, really and truly to do something about regularizing employment * * *. This enlisted and brought labor into line, indicating labor's willingness really to be helpful in the process" (R. 384–385).

The adoption of union-management cooperation with its collective bargaining features has removed the hostile attitude of labor toward improved methods in production. "I was struck by the interest and the pride that individual men themselves took in concrete propositions that had been the result of their suggestions and the pride they manifested, for example, in the reduction of defective cars and locomotives * * *" (R. 385).

Disputes between employers and employees over the question of the status of unions as bargaining agencies have in the past been productive of great industrial unrest. Under union-management cooperation "the energy of management which was formerly dissipated in adjusting labor disputes is devoted * * * to better planning

and performance." Union-management cooperation plans containing, as they do in all cases, provisions for the handling of grievances and the settlement of disputes by a collective bargaining machinery have thus been instrumental in eliminating an important cause of labor unrest in various industries. Under these plans labor has found many opportunities to do constructive work and has shown its capacity to deal with major economic questions in a statesmanlike manner. For example, in 1932, when the railroads of the country were experiencing the effects of the depression and it became necessary to effect a wage reduction in order to avoid a complete break-down, the various railway labor unions throughout the country, through their national officers, entered into an agreement as a result of peaceful negotiations whereby the wages of employees were reduced. This is one example among many in which organized labor under union-management cooperation has shown itself capable of helping to solve a national crisis (R. 404–405).

7. Requisites to the successful operation of the plan.

The success of union-management cooperation in effecting its purposes depends upon the presence of certain factors.

(1) "The right of employees to choose their own organizations and representatives, absolutely free from interference or help by management, must be recognized. In other words, there must be true freedom of association for the employees as well as for the employer * * *. If the employer attempts to dominate the situation the employees will not feel free to respond and will consider that they are being denied something which should be, and is, their right, as they feel and understand the relationship which the plan contemplates. If the employer dictates or tries to control the type of organization or the representatives of the employees, or pays the representatives of the employees, naturally the employees become suspicious of anything that such representatives may suggest to them, by way of what they might do to help out" (R. 392–393).

(2) "Genuine collective bargaining must be established, resulting in written agreements as to wages, working rules, and the prompt and orderly adjustment of grievances" (R. 393).

(3) "Management must conceive of the unions as potential assets rather than as liabilities and be willing to accord them constructive as well as protective functions, i. e., to accept their help in furthering the purposes of the management—improved service to the public, especially" (R. 394–395).

(4) "Management must agree to do everything within its power to regularize employment and consider that this is as important as maintaining financial credit" (R. 395).

(5) Benefits under the plan must be shared from time to time, and the interest of the employees must be constantly stimulated (R. 395).

(6) There must be established joint relationships between the union and the management, and administrative machinery for carrying the program into effect (R. 395).

III. HISTORY OF GOVERNMENTAL INTERVENTION IN LABOR DISPUTES [1]

Governmental intervention of some kind has been the rule in major labor disputes for more than half a century. Some of it has been without precedent or legislative authorization, much of it without preliminary planning or research. It has been most effective in those cases in which the Government acted prior to the outbreak of the strike to remove its causes (R. 99–105).

A. TYPES OF FEDERAL INTERVENTION [2]

Federal intervention is of three types: intervention by the Federal judiciary, by Congress, or by the President or some unit of the executive branch (R. 11).

Executive intervention may in turn be classified as follows:

(1) Friendly indirect intervention by virtue of office, such as investigation of strike issues, letters to either or both sides urging settlement, conferences with the disputants, personal mediation, or conciliation by the President, and making definite proposals for settlement or legislation (R. 11–12).

(2) *Publicity.*—This consists of the publication by the President of the results of his efforts of mediation and the findings of investigations made under his direction, with the object to hastening settlement (R. 12).

(3) *Coercion.*—This includes (*a*) securing legislation making possible the ending of a strike by enacting some of the workers' demands; (*b*) threatening investigation of one of the contestants with regard to prices and profits, with the object of securing concessions to avoid the investigation; (*c*) securing injunctions to avert or end a strike; (*d*) using Federal troops to end a strike; and (*e*) appointing Federal marshals to enforce orders of the Federal courts (R. 12–13, 17–18).

B. INTERVENTION BY INJUNCTION [2]

The Federal Government has itself been party plaintiff in suits seeking injunctive relief in labor disputes. Under the Sherman Anti-Trust Act the Government has on 10 occasions sought, and on 8 obtained, writs restraining workers' activities. The total number of injunctions issued by the Federal courts in labor disputes has been authoritatively estimated, for the period from the year 1894 to May 1,

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[1] "The National Labor Relations Board is not a novel venture * * * On the contrary, this Board is an outgrowth of the extensive experience of the Government in intervention in labor relations, and, particularly, in labor disputes." Government Intervention in Labor Disputes, Board's exhibit 52, infra, p. 137.

[2] Testimony of Edward Berman.

1931, to be 508. Outstanding examples were the writs issued in the following strikes:

1. The Pullman strike of 1894, which was the first widely known example of the use of the injunction in labor disputes (p. 21). As a result of the refusal of the Pullman Co. to deal with the American Railway Union, a Nation-wide boycott had been called. Thereupon, the General Managers' Association started a campaign to defeat the strike, securing the appointment of Edwin Walker as special United States attorney. Soon after his appointment Walker applied for and obtained injunctions in a number of Federal courts, and the strike was quickly brought to a close (R. 21, 31–34.)

2. The railway shopmen's strike of 1919, in which the United States Attorney General secured Federal injunctions restraining the strikers' activities (R. 81).

3. The railway shopmen's strike of 1922—estimates as to the number of injunctions issued in this strike by the Federal courts upon application of the Government, range from 100 to 300 (R. 17).

4. The bituminous coal strike of 1919—the major form of intervention in the 1919 bituminous coal strike was the issuance of an injunction under the Lever Act at the request of Attorney General Palmer. By its terms the officers of the United Mine Workers of America were ordered to rescind the strike order (R. 81–82).

C. INTERVENTION BY THE USE OF FEDERAL TROOPS [2a]

There have been a great many instances of the use of Federal troops to end strikes (R. 18). As early as 1894 President Cleveland used troops in the Pullman strike (R. 21). Theodore Roosevelt sent troops into the Morenci, Ariz., strike area in 1903, into Colorado in the 1903 and 1904 strikes, and into the area affected by the gold miners' strike in 1907 (R. 47). In the Colorado coal strike of 1913–14, after the burning of the strikers' tent colony by the State National Guard, which resulted in the death of a number of men, women, and children, Federal troops were sent in by President Wilson [3] (R. 62–63). In 1919 Wilson sent troops to Gary, Ind., in the steel strike (R. 20, 81–89), and into West Virginia, Pennsylvania, Tennessee, Wyoming, Utah, New Mexico, Oklahoma, Kansas, and Washington, in the bituminous coal strike (R. 82).

In the West Virginia mine disputes of 1921 attempts were made by the National Guard and the State police to suppress disturbances. Their activities increased the disorder, and President Harding sent in Federal troops to restore peace (R. 20, 89–90).

"Q. With respect to the West Virginia situation, I will call to your attention a quotation from your book, Labor Disputes and the President, which reads as follows:

"It is not intended to leave the impression that real industrial peace exists in West Virginia. As long as the operators continue their bitter fight against the unions, and the United Mine Workers continue their attempts to organize, hostility of a violent nature are likely to arise without great provocation."

"When did you write that?

"A. 1923.

[2a] Testimony of Edward Berman.

[3] See infra, p. 39.

"Q. I will ask you whether or not you still subscribe to the opinion which appeared in your book in 1923.

"Answer. I do. I think the situation in West Virginia is better, but without question that in general is true. Troops do not settle disputes" (R. 90).

Other labor disputes in which Federal troops took a hand were the Coronado coal strike in Arkansas (R. 76); the Coeur d'Alene metal mining disturbance in Idaho (R. 35); the general strike in Seattle (R. 89); the strike of streetcar workers in Denver (R. 89); the copper strike in Butte (R. 89); and the 1921 coal strike in West Virginia (R. 89).

D. INTERVENTION BY THE APPOINTMENT OF DEPUTY MARSHALS[2]

The use of Federal troops to end strikes has at times been supplemented by the appointment of deputy marshals, supposedly under the control of the Federal marshal in a given strike area. In a great many cases, however, these special marshals, the responsibility for whose appointment ultimately rested upon the President, were in fact paid for by the private employer affected by the strike. In general, they were used in connection with the enforcement of the injunction process (R. 18).

In the Pullman strike of 1894 some 5,000 of these marshals were deputized for use against the strikers. These men were, as a rule, picked at random from the streets of Chicago and were paid by the Pullman Co. Their presence enhanced, rather than allayed, the disorder (R. 18–19).

Deputy marshals were also used in the Coronado coal strike of the Bach-Denman mine in Arkansas to enforce a Federal injunction (R. 76). In the railway shopmen's strike of 1922 thousands were deputized for the same purpose (R. 94).

E. PRESIDENTIAL INTERVENTION CONSIDERED BY SEPARATE ADMINISTRATIONS[4]

1. President Cleveland.

PULLMAN STRIKE OF 1894

The Pullman strike of 1894 was featured by the first important use of the labor injunction in this country, sued out by a special United States attorney, as well as by the sending of troops to the Chicago strike area by President Cleveland, over the protest of the Governor of Illinois[5] (R. 21, 31–34). The President acted in this case without precedent and without congressional authorization (R. 99).

PRESIDENTIAL COMMISSION TO INVESTIGATE THE PULLMAN STRIKE[6]

In 1888, statutory machinery had been set up for the peaceful settlement of railway labor disputes. No effort was made to prevent the Pullman strike by resorting to this machinery. "But after the

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[2] Testimony of Edward Berman.
[4] Testimony of Edward Berman, see footnote, p. 39.
[5] See also, supra, p. 34.
[6] For additional excerpts from the report of the Commission, see Board's exhibit 9, infra, p. 73.

strike was over and acknowledged by all parties to have been very effectively killed by the imprisonment of the strikers and strike leaders, and the use of the injunction, of troops, and of marshals, President Cleveland appointed a Commission, under the law of 1888, to investigate the Pullman strike" (R. 22–23). In its report, "the Commission pointed out that though there were a number of immediate causes (of the strike), the principal ones had to do with the fact that wages had been reduced, that the rental of company houses in which most of the employees lived had been maintained at their previous level" (R. 27).

It stated further "that a protest grievance committee of the men, organized after a meeting of the men to represent them, somewhat informally, had appeared to protest against this thing, and the company had assured the members of that committee that there would be no action against any of the members who appeared to make the protest. Within 3 or 4 days, however, the outstanding leaders of that committee were discharged and that immediately led to a strike.

"* * * the Commission pointed out that at the bottom of the whole situation was the company's attitude with respect to dealing with its employees" (R. 27–28).

The report reads in part:

> The Pullman Co. is hostile to the idea of conferring with organized labor in the settlement of differences arising between it and its employees. * * * The company does not recognize that labor organizations have any place or necessity in Pullman, when the company fixes wages and rents and refuses to treat with labor organizations. The laborer can work or quit under the terms offered—that is the limit of his rights. This position secures all the advantages of the concentration of capital, ability, power, and control over the company in its labor relations and deprives the employees of any such advantage or protection as labor unions might afford. In this respect the Pullman Co. is behind the age (R. 28).

With respect to recognition of labor organizations by employers and collective bargaining, it continues:

> The Commission urges employers to recognize labor organizations—that such organizations be dealt with through representatives. It is also satisfied that if the employers will consider employees as thoroughly essential to industrial success as capital, and thus take labor into consultation at proper times, much of the severity of strikes can be tempered and the number of such strikes be greatly reduced (R. 29).

2. President McKinley.

ENFORCEMENT OF THE PERMIT SYSTEM IN THE COEUR D'ALENE DISTRICT

The operators of the Coeur d'Alene metal mines in Idaho had instituted a "permit system", which made it "practically impossible for anybody to remain in the community if he were a member of the union. Nobody could get a job unless he had a permit, and he could not get a permit unless he promised not to belong to the union" (R. 35).

President McKinley sent troops into the area during the labor disturbances which "were used to enforce the permit system. For a period of some 6 months Federal troops were being employed in Idaho for the essential purpose, whether or not so recognized by the President, of destroying the Western Federation of Miners" (R. 35).

INDUSTRIAL COMMISSION OF 1898 TO INVESTIGATE THE CAUSES OF LABOR DISPUTES [7]

This Industrial Commission of 1898 was appointed by the President to investigate and report upon the causes of strikes and upon the industrial conditions in the various States. It consisted of five Congressmen, five Senators, and nine others, appointed by the President, and was "fairly representative of different industries and employments." The Commission examined over 530 witnesses, the scope of its investigation covering problems of agriculture, manufacture, business, and labor.

Some of the outstanding things in the Commission's report related to the justification of labor organizations. It said, for example:

> It is readily perceived that the position of a single workman, face to face with one of our great modern combinations, such as the United States Steel Corporation, is in a position of very great weakness. A workman has one thing to sell—his labor * * *. Under such conditions there is little competition for the workman's labor. Control of the means of production gives power to dictate to the workingmen upon what terms he shall make use of them (R. 37).

The United States Steel Corporation was cited in the report as an instance of a corporation so large that it was inconceivable that an employee could be on an equality with it in the matter of bargaining power (R. 41).

The report also called attention to the interstate aspects of the problems it had been studying. Recognizing the necessity of national action in these matters, it recommended the creation of National Federal machinery for the purpose of averting strikes (R. 40–41).

3. Theodore Roosevelt.

THE PRESIDENT'S COMMISSION TO INVESTIGATE THE ANTHRACITE COAL STRIKE OF 1902 [8]

Theodore Roosevelt's administration was second only to Woodrow Wilson's in the number of Presidential interventions in labor disputes.

The first and most important of these was occasioned by the anthracite coal strike of 1902, which involved 150,000 workers, lasted 5 months, and resulted in a loss of $25,000,000 in wages, of $28,000,000 in freight receipts, and of $1,800,000 of union funds expended for strike relief.

One of the causes of the strike was the refusal of the mine operators to meet with the miners' representatives. Roosevelt, upon the request of New England public officials for action, stepped in and succeeded in bringing about a meeting between the representatives of the contestants. The conference resulted in an agreement that a commission be appointed by the President to investigate the dispute, make recommendations, and decide the important questions involved (R. 42–44).

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[7] For excerpts from the final report of the Commission, see Board's exhibit 10, infra, p. 74.

[8] For the findings and recommendations of the Commission, see Board's exhibit 11, infra, p. 76.

The President thereupon appointed a commission, consisting of George Gray as its chairman, Carroll D. Wright, the United States Commissioner of Labor, as its secretary, and five others designated to represent the general interests of the parties involved (R. 47).

In its official report, the committee states:

> The occasion of the strike of 1902 was the demand for an increase in wages, and a decrease in time. *The cause lies deeper than the occasion, and it is to be found in the desire for recognition by the operators of the miners' union* (R. 43–44).

After going into great detail about inequalities in bargaining power, the Commission recommended that a plan be set up under which all differences between employers and employees be considered in conference; that employees have the right to choose representatives from their own ranks; and that these representatives be officially recognized by the operators (R. 44).

The Commission also "recommended, as a means of preventing labor disputes, Federal action and the enactment of an act of Congress which would authorize the President to appoint commissions with powers of investigation and the power of subpena, and * * * stated that the jurisdiction of Congress to enact such legislation existed in those cases where the free and regular movement of commerce between the States was involved; it followed the recommendations of Charles Francis Adams, who had written a paper that was addressed to and read before a sociological association and which contained a draft of an act providing for Presidential intervention in the form of the appointment of investigatory commissions and which uses the phrase 'free and regular movement of commerce among the several States' as the basis for the jurisdiction of Congress in enacting such legislation" [10] (R. 46).

As in 1894, circumstances compelled the action of the President in this case, although he had neither precedent nor statutory authorization therefor (R. 99).

OTHER INTERVENTION BY THEODORE ROOSEVELT

Roosevelt also intervened in the Morenci, Ariz., strike of 1903, the Colorado miners' strike of 1903–4, and the gold miners' strike of 1907. In each of these disputes troops were sent into the affected area (R. 47).

4. President Wilson.

President Wilson's intervention in labor disputes was more extensive than that of any other President (R. 47).

ACTION TO AVERT THREATENED TRAINMEN'S STRIKE OF 1912–13

In 1912 negotiations between the railroads and the representatives of the conductors and trainmen broke down, and the unions voted overwhelmingly to strike. President Wilson called the disputants together to discuss issues and possible arbitration and found that arbitration was possible but that the railroads refused to accept the machinery provided for in the Erdman Act of 1898. He then called

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[10] See infra, p. 79.

another conference of congressional leaders, representatives of the railroads, and representatives of the unions, which resulted in the acceptance of a proposed modification of the Erdman law. The President thereupon secured the enactment of the Newlands Act, which embodied the plan and provided suitable means of arbitration of the dispute (R. 47–49).

ACTION TO END VIOLENCE IN THE COLORADO COAL STRIKE, 1913–14

One of the major objectives of the Colorado coal strike was to gain recognition for the mine workers' union. President Wilson did everything in his power, but without success, to get the Colorado Fuel & Iron Co. to meet with the union representatives and discuss the issues. He wrote many letters to both parties in the dispute, an especially great number of these being directed to the employers, with the object of bringing about some form of peaceful settlement.

Then came the Ludlow massacre. Strikers had been evicted from their houses by the coal company and had set themselves up in a tent colony. Beneath one of these tents a tornado cellar had been dug where the women and children might seek protection in the event of shooting between the disputing parties. The Colorado National Guard set the tent afire, and every one of the women, children, and old people who had taken refuge in it was killed. President Wilson thereupon sent in Federal troops, whose presence brought the violence and bloodshed to an end (R. 62–64).

THE COMMISSION ON INDUSTRIAL RELATIONS, 1912–15 [11]

Under an act passed during Taft's administration, Wilson appointed a commission to investigate the great industrial unrest of the period and to inquire into its causes. It was a period of violence and Nation-wide strikes in steel, textiles, coal, building, and metal (R. 536).

The Commission held hearings almost continuously for a year and a half in the most important industrial centers of the country. More than 700 witnesses were interviewed. Among them were representatives of employers and of labor, and disinterested students of industrial relations (R. 537–538).

It published two reports, one under the direction of Professor Commons, the other under the direction of Mr. Basil Manly. Both reports asserted the advisability of recognizing the principle of collective bargaining. Both declared that there was a substantial inequality of bargaining power as between the individual employee and his employer (R. 539).

The Commission found that in large-scale industry throughout the country there was a general denial by employers of the right of employees to organize and bargain collectively; "that the advantages to the workers (of organizing) were dependent upon the strength of the organization with which it was affiliated and its freedom from control by the employing interests; that freedom from control was

[11] This discussion of the Industrial Commission of 1912–15 is from the testimony of Basil M. Manly. The rest of the section on Federal intervention considered by administrations, as noted above, p. 35, is from the testimony of Edward Berman.
For excerpts from the Commission's final report, see Board's exhibit 13, infra, p. 81.

in large measure in inverse proportion to the dependence of the members of the organization upon employment by that particular employer" (R. 542–543).

Local organizations employing persons other than the employees of a particular establishment were found to be stronger in bargaining power than company unions, and similarly a national union, other things being equal, stronger in bargaining power than local unions. The Commission's report reads, "To suggest that labor unions can be effective if organized on less than a national scale seems to ignore entirely the facts and trend of present-day American business" (R. 543).

The Commission concluded that discriminatory discharges, the use of labor spies, and the use of blacklists, all of which it found prevalent, tended to promote unrest and dissatisfaction among the workers and led to violent and destructive conflicts [12] (R. 550).

SPECIAL INVESTIGATION OF THE COLORADO STRIKE OF 1912 [13]

Mr. George P. West was assigned by the Commission to the specific task of investigating the Colorado strike of 1912 (R. 66). His report on this strike was later published in connection with the official report of the Commission [13] (R. 67). Regarding the causes, Mr. West said in his report: "The struggle in Colorado was primarily a struggle against arbitrary power in which the question of wages was secondary as an immediate issue."

Mr. West found that summary discharges by the company and the use of the blacklist, of armed guards, and of spies were among the grievances of the employees which brought on the strike. But, the major demand of the strikers was union recognition (R. 67–68).

THE USE OF TROOPS IN THE CORONADO COAL STRIKE

President Wilson sent troops into the Bach-Denman mining area in Arkansas in the Coronado coal strike.

JOINT PRESIDENTIAL AND CONGRESSIONAL INTERVENTION TO PREVENT RAILROAD STRIKE (1916)

In 1916 the railway workers, having felt for some time that they were being underpaid, demanded increases in pay. Negotiations were carried on for some time and the dispute narrowed down to the issue of a basic 8-hour day. President Wilson personally appeared before Congress and obtained the enactment of the Adamson Act, which enacted the basic 8-hour day. The enactment of this legislation averted the strike (R. 76–78).

MEDIATION COMMISSION IN METAL MINERS' STRIKES

As a result of strikes and disorder in Arizona, President Wilson appointed a Mediation Commission. This body investigated the situation in Arizona and in other places, offered suggestions for settlement, and was successful in adjusting many disputes. None of these disputes involved instrumentalities of interstate commerce.

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[12] See also supra, p. 14.
[13] For a summary of Mr. West's findings, see Board's exhibit 12, infra, p. 81.

Members of the Commission were Secretary of Labor William B. Wilson, Col. J. L. Spangler, Verner Z. Reed, J. H. Walker, and E. P. Marsh. Its secretary was Felix Frankfurter (R. 78–79).

COMMISSIONS TO AVERT RAILWAY STRIKES

In 1913 a considerable number of threatened strikes were averted by the President through the appointment of a Railroad Wage Commission. "Thereafter other additional boards and commissions were set up following the work of the Railroad Wage Commission. As the result of the activities of these various boards, disputes on the railroads were prevented from breaking into open hostility during the war" (R. 79–80).

EXECUTIVE INTERVENTION IN THE SHOPMEN'S STRIKE

Wilson attempted to settle the 1919 shopmen's strike by his personal efforts. The United States Attorney General secured Federal injunctions, restraining the carrying on of the strike. The Director General of the Railways also intervened (R. 80–81).

ATTEMPTED MEDIATION IN THE 1919 STEEL STRIKE[14]

In the steel strike in 1919, in which troops were sent into the strike area, the President urged Judge Gary, chairman of the board of the United States Steel Corporation, to meet with representatives of the union. His efforts were without success (R. 81).

INTERVENTION IN THE BITUMINOUS COAL STRIKE OF 1919

In this strike President Wilson intervened by sending Federal troops in the various coal-mining regions (R. 82). He also appointed a Bituminous Coal Commission. "It was as the result of the appointment of that Commission that the strike was called off * * *" (R. 82).

THE PRESIDENT'S INDUSTRIAL CONFERENCES (1919–20)[14]

In 1919, while the steel strike was going on, the President called a bipartite conference in which employees and employers were equally represented and which was headed by a chairman representing the public. Samuel Gompers and John D. Rockefeller were among its members (R. 83).

"The conference resulted in a deadlock and failure because when it came to the making of a report and the expressing of conclusions in definite terms, the employers were willing to make a statement about the desirability of collective bargaining and the employee representatives were willing to approve that statement; but the employers insisted upon the inclusion of a clause to the effect that the representatives for the purpose of collective bargaining must be confined to employees of the company—and, of course, the trade-unions refused to accept that and the conference came to an end.

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[14] For excerpts from the report of the second conference, and its proposed plan for the adjustment of disputes, see Board's exhibit 14, infra, p. 85.

"Immediately thereafter President Wilson constituted another conference which became known officially as the President's Industrial Conference. It assumed its work on December 1, 1919, and rendered a report on March 6, 1920.

"That conference * * * did not represent any particular persons symbolizing the interest of any particular party to the pursuit. It was supposed to be a general public conference" (R. 83–84). It included Secretary of Labor William B. Wilson, who was chairman; Herbert T. Hoover, vice chairman; Stanley King, Samuel W. McCall, Julius Rosenwald, Oscar S. Straus, William O. Thompson, Frank W. Taussig, George W. Wickersham, Owen D. Young, Henry R. Seager (R. 84–85).

"The conference published a report * * * 30 pages in length. It recommended various types of adjustment machinery, the only compulsory aspect of which had to do with investigations of boards of inquiry to be established in case voluntary settlement did not take place" (R. 85).

In its report the conference recommended complete freedom in the choice of employee's representatives. It reads, in part:

> Representatives must be selected by the employees with absolute freedom. In order to prevent suspicion on any side, selection should be by secret ballot. There must be equal freedom of expression thereafter. All employees must feel absolutely convinced that the management will not discriminate against them in any way because of any activities in connection with shop committees (R. 86).

The Commission was unanimous in recommending the appointment of national boards, which, in turn, were to have regional boards, with authority to investigate disputes and their causes, and to adjust disputes where parties consented to such adjustment (R. 88).

ARBITRATION IN THE ANTHRACITE WAGE DISPUTE OF 1920

In 1920 President Wilson secured an agreement from anthracite employers and workers to submit their wage dispute to arbitration by a commission called the United States Anthracite Coal Commission. Its members were appointed by the President (R. 88).

5. President Harding.

INTERVENTION IN THE WEST VIRGINIA MINE DISPUTES, 1921

As stated above, troops were sent into West Virginia in the 1921 mine disputes [15] (R. 89–90).

INTERVENTION IN THE COAL STRIKE OF 1922

In the coal strike of 1922 "the President attempted to bring about a conference of the two sides. First, the attempts were made by the Secretary of Labor, Davis, and then he called a conference himself and held it in the White House. He threatened to call out troops if a settlement were not effected, and then he asked Congress for a law providing for the appointment of a commission of investigation. Such a law was passed and John Hays Hammond was appointed as the chairman" (R. 90–91).

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[15] Supra, p. 34.

EFFORTS TO SETTLE THE RAILWAY SHOPMEN'S STRIKE IN 1922

The railway shopmen's strike of 1922 involved 400,000 railway shopmen. One of the demands of the workers, prior to the strike, was a conference with the railroad operators. Before the strike was 2 weeks old the strikers, realizing that their cause was lost, sought to get reinstatement without discrimination. The railway operators refused to reinstate them. The question of reinstatement then became the dominant issue in the strike and was involved in all of President Harding's attempts at settlement (R. 92–93).

6. President Coolidge.

INTERVENTION IN THE THREATENED BITUMINOUS COAL STRIKE OF 1924

"* * * The agreement between the bituminous coal operators and the miners expired early in 1924. The miners asked for a conference to negotiate a new agreement. Many of the operators had come to the conclusion that they did not want to have any further relations with the union and they refused to meet the workers in conference.

"Thereupon Secretary of Commerce Hoover held a conference with President Coolidge as the result of which conference a statement was issued at the White House to the effect that the President believed that the two parties should get together.

"Thereafter Mr. Hoover issued letters and urged personally upon various coal operators that they meet with the miners and the union officials, and as a result of those activities a conference was held in Jacksonville from which came the so-called Jacksonville agreement. That agreement was reached sometime early in 1924 and was put in effect for 3 years."

The activities of Secretary Hoover in his efforts to settle this dispute were supported by the President (R. 94–95, 97).

PRESIDENT'S MESSAGE TO CONGRESS, 1925

In connection with anthracite-coal strike of 1925, President Coolidge, in a message to Congress, said:

> The National Government had no authority to deal with the matter. * * * The Federal Government has permitted itself to remain so powerless that its natural attitude must be humble supplication. Authority should be lodged with the President and the Departments of Commerce and Labor, giving them power to deal with an emergency. They should be able to appoint temporary boards with authority to call for witnesses and documents, conciliate differences, encourage arbitration, and, in case of threatened scarcity, exercise control over distribution[17] (R. 98).

[17] For later instances of Federal intervention, see Government Intervention in Labor Disputes, by David J. Saposs, Board's exhibit 52, infra, p. 137.

F. SPECIAL FEDERAL AGENCIES FOR INTERVENTION IN LABOR DISPUTES [18]

1. Conciliation Service of the Department of labor.[19]

The Conciliation Service of the Department of Labor came into existence on March 5, 1913 (R. 50). Since then it has concerned itself with some 16,000 labor disputes involving nearly 16,000,000 wage earners (R. 53).

When, upon the request of an employer, of employees, or of the public, or on its own motion, the Conciliation Service intervenes in a labor dispute, it sends one of its commissioners of conciliation, of whom there are at present 30 to 35, to the scene of the difficulty. When he arrives "he seeks to bring the contending interests together without * * * working under rigid instructions to follow out any set principles, because, in the handling of problems of conciliation a great deal of elasticity is necessary, because no two strikes or threatened strikes are exactly alike * * *" (R. 51, 53–54).

"He tries to bring about a situation whereby the directly interested parties, the employers and the employees, will solve their own problems in their own way, guided, advised, and counseled by a man who has had experience in somewhat similar situations, who has seen other arrangements tried out in various strikes, and threatened strikes, and who can bring to bear at the proper time this information * * * and makes suggestions and recommendations." He has no power to make decisions or orders (R. 53–54).

"The Conciliation Department in its conciliation work would be unable to carry on or would at least be very greatly hampered if the workers covered by its service were not organized. * * * We have got to have some agency with which you can deal, some collective agency or some committee—because if you did not, you would have every individual in the plant with a separate grievance and you could never get anywhere" (R. 60–61).

During recent years the department has conducted or supervised the holding of nine elections. Each case has been at the direct request of one of the parties, sometimes the employer, and with the consent of all parties concerned. It was found that the holding of secret elections was conducive to a better understanding between the contending parties (R. 56–57).

The Conciliation Service cooperates fully with other Government agencies which concern themselves with labor problems. It does not act in cases involving unfair labor practices as defined by the National Labor Relations Act unless specifically requested to do so by the National Labor Relations Board (R. 57–58). In 29 cases it was requested to cooperate in the supervision of elections by the National Labor Board and the Petroleum Labor Policy Board (R. 56), while 249 cases originally submitted to it were referred to the National Labor Relations Board during 1934, 1935, and the early part of 1936 (R. 59).

"* * * We (the Conciliation Service) direct our efforts toward the prevention of strikes and lockouts, and during the years there has been a gradual change in the relativity of strikes and of threatened strikes * * *" (R. 57).

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[18] See also Board's exhibit 52, infra, p. 137.
[19] Testimony of Hugh L. Kerwin.

2. The National War Labor Board.[20]

"* * * the steps leading up to the board were taken during the early part of 1918, when labor unrest, and difficulties about wage adjustments were seriously interfering with the prosecution of the war" (R. 558).

At that time the Secretary of Labor called together an advisory council of seven members, headed by John Lind. This council recommended "the creation of a National Labor Conference Board which should contain the leading employer interests and leading labor interests under mutual chairmanship, to recommend a plan for the handling of industrial relations during the period of the war." President Wilson appointed such a board—the National Labor Conference Board—which met, and after rather prolonged sessions, submitted a report to the President recommending "the formation of a National War Labor Board to continue throughout the period of the war, which should be in effect a supreme court of industrial relations * * *." The President accordingly created the War Labor Board. Its personnel included William Howard Taft and Frank P. Walsh as joint chairmen, five representatives of the employers, recommended to the President by the National Industrial Conference Board, and five representatives of labor, recommended to the President by the American Federation of Labor. At the same time, President Wilson appointed a number of outstanding industrialists, judges, and educators as members of a panel of umpires. Mr. Walsh was later succeeded as co-chairman by Mr. Manly (R. 556–559).

The proclamation creating the Board included the principles recommended to the President by the National Labor Conference Board; namely, that workers had the right to organize in trade unions and bargain collectively through chosen representatives; that this right ought not be denied, abridged, or interfered with by employers in any manner whatsoever; and that employers ought not discharge workers for membership in trade unions or for legitimate trade-union activities (R. 560–561).

The Board handled more than 1,200 cases during its lifetime. They were of two classes: first, cases known as joint submissions, in which the parties joined in asking the Board to sit as a board of arbitration with an agreement to accept whatever award was handed down; and, second, ex-parte cases, in which either the employer or employees would bring in a complaint (R. 561–562).

The allegations of these complaints were then investigated. If they were found to be substantially as stated and to constitute a material grievance, the case would be set down for a hearing, at which the Board could secure information and require the attendance of witnesses by compulsory process. Upon the evidence submitted at the hearings, an award would be made as in a case of joint submission (R. 562).

"In practically all experiences during the war period the awards of the Board were carried out, because of the very large powers which the Government possessed during the war period, and because the Government, through the Ordnance Department and other purchasing agencies, was the largest buyer. * * *" (R. 562).

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[20] Testimony of Basil M. Manly. See the summary of the History and Work of the National War Labor Board in Board's exhibit no. 36, infra, p. 126.

During the course of its work the Board encountered interference by employers with collective bargaining, discharges of employees for union activities, and employer domination of company unions. In such cases it issued appropriate orders and awards designed to effectuate the purpose and intent of the Presidential proclamation (R. 564). These awards were based not on legal precedents but on the principles stated in that Presidential proclamation (R. 564–566).

3. The National Bituminous Coal Labor Board.[21]

This Board was created to have jurisdiction over labor problems in the bituminous branch of the coal industry. Under this Board the country was divided into six divisions, each division having a certain amount of territory under its jurisdiction. Each of these divisions had a board made up of an impartial chairman, a representative of the miners, and a representative of the operators. The six chairmen of these divisional boards constituted the National Bituminous Coal Labor Board (R. 343–344).

In 1934 the board of division 2, which covered Indiana, Illinois, and Iowa, intervened in a dispute between the United Mine Workers of America and the Progressive Miners of America, at Mark, Ill. The operator of the Mark mine, which had theretofore been a non-union mine, entered into an agreement with the United Mine Workers of America. The Progressive Miners of America, a competitive organization, thereupon called a strike.

The bituminous coal labor board of division 2, at the request of the Governor of Illinois, immediately held a hearing, which resulted in a finding that proper employee representation could be determined only by an election. The election was held under the supervision of the board, and resulted in favor of the Progressive Miners of America. The operator was then ordered by the board to cancel his agreement with the United Mine Workers of America and to enter into an agreement with the Progressive Miners of America, as the choice of the majority of the men in the mine. The operator complied with the board's order, the strike was called off, and the mine reopened (R. 344–346).

It is significant in this connection to note that one of the members of the board which conducted the election and made the decision, although he was a member of the United Mine Workers, acquiesced not only in the determination of the board to hold an election, but also in the certification of the Progressive Miners of America as the exclusive agency for collective bargaining (R. 346–347).

4. Petroleum Labor Policy Board.[22]

The Petroleum Labor Policy Board had jurisdiction over all labor problems arising under the petroleum code. It consisted of three impartial members (R. 335–336).

During its existence it handled 3,945 cases involving violations of the wages and hours provisions of the code, 2,862 of which had been closed at the time of the Schechter decision. In 1,458 of these closed cases disputes had been adjusted and the operations of the respondents brought into compliance with the code; in 922 cases no violation

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[21] Testimony of John A. Lapp. See also supra, p. 25.
[22] Testimony of John Lapp. See also supra, p. 24.

of the petroleum code provisions had been found, and in 482 of the closed cases involving violations no compliance had been secured up to the time of the Schechter decision (R. 337).

Seventy-seven of the cases involved charges of discrimination and coercion against union men, or charges that company unions were being forced upon employees by employers; of this number 7 cases were withdrawn and in 22 cases the board found no evidence of coercion or discrimination. Settlement was obtained in 35 cases, and 13 cases remained unadjusted at the time of the Schechter decision. The number of men involved in all these charges of discrimination was 6,613 (R. 337).

As a result of discrimination against employees for union activities in the petroleum industry, the board had to deal with 20 strikes and 15 threatened strikes. Of these, six were instituted principally because the employer or employers refused to bargain collectively; four because the employer or employers refused to meet union demands, although they did meet and bargain with the employee representatives; one because the employer discriminated against union members; two because the employers failed to abide by a previously negotiated agreement; and one because the employers had started a practice of leasing stations (R. 338).

During the course of its work the board conducted 52 elections, involving approximately 9,000 men [23] (R. 339–340).

"Q. Now, did any of the elections taken by the Board result in any disorder during the conduct of the elections?

"A. We have no evidence whatever of anything but harmony in elections.

"Q. State whether or not the experience of the Board showed elections to be devices to allay industrial unrest; and if so, under what circumstances, and what are the facts?

"A. I would say from the experiences of the Board that it was almost 100 percent perfect as a means for allaying controversy on a particular point. The only exceptions to this statement are that in two or three instances the companies failed thereafter to abide strictly by the results of the election, in that they attempted by various subterfuges to get around the necessity of dealing with the unions. They did this as they thought, legally, and within their proper rights, but it did result in two or three instances in the failure to put into effect the results of the election.

"However, as a matter of producing harmony, I think that there is no question about the almost perfect results obtained." [24] (R. 340–341).

5. The National Mediation Board and its predecessors.[25]

THE ACT OF 1888

In 1877 and in 1888 several very bitter railroad strikes occurred as a result of the failure of the railroads to recognize the right of their employees to organize and to bargain collectively. Public interest

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[23] See U. S. Bureau of Labor Statistics, Monthly Labor Review, October 1935, Employee Elections Conducted by Petroleum Labor Policy Board.

[24] For further instances of special Federal agencies, see Board's exhibit 52, infra, p. 137.

[25] Testimony of William M. Leiserson. See also supra, p. 126, as to successful experience with collective bargaining in the railroad industry.

was aroused by these conflicts, and a series of attempts to enact appropriate legislation followed (R. 150–153).

In 1888 an act was adopted authorizing the President, in the event of a railroad strike, to appoint a commission to investigate and make a public report, and providing for an arbitration board where the parties were willing to arbitrate. The act was in effect 10 years, but not a single arbitration board was set up and only one investigation was made under its provisions. The latter was in connection with the Pullman strike, when the damage had already been done and when the only question was, "Who was to blame?" (R. 151).

The scarcity of arbitrations under the act of 1888 resulted in the main from the requirements that before an arbitration could be entered into, an organization had to be found to live up to the arbitration award. Since there were in the early days very few railway labor organizations, the full effect of the provisions of these acts concerning arbitration could not be, and was not, realized (R. 161).

The act of 1888 was an "unintelligent piece of legislation" because it had no provisions protecting the worker's right to organize. The Commission which investigated the Pullman strike made it clear that the recognition of this right was a necessity of the times. The definite recommendations of this Commission with respect to the protection of the worker's right to organize, in conjunction with the general public feeling that "this investigation business didn't help much", resulted in the passage of the Erdman Act by Congress in 1898 (R. 151, 153, 157).

THE ERDMAN ACT OF 1898

The Erdman Act contained no positive provision protecting the right of organization. It did, however, contain a provision prohibiting what in effect is now called the yellow-dog contract. It provided also some mediation machinery for the adjustment of labor disputes before they came to a head in a strike (R. 157).

In the mediation proceedings under this act the workers were represented by the train-service brotherhoods, a very powerful group of railway employee unions. The act proved so successful that Congress was encouraged to strengthen its provisions, and as a result the Newlands Act was passed by Congress in 1913 (R. 161).

THE NEWLANDS ACT OF 1913

The Newlands Act created a permanent mediation board. It directed the board to mediate disputes or induce the parties to arbitrate. The board was quite successful in the performance of these tasks, and a great many disputes were mediated or arbitrated (R. 158–159).

Arbitration had by this time become a relatively simple matter, since the workers were now organized into strong unions, which the carriers were bound to recognize and deal with (R. 159).

THE ADAMSON ACT OF 1916

Up to this time railroad workers had been working on a 10-hour basic day. The railroad brotherhoods now started an organized campaign for an 8-hour basic day. Negotiations followed, with both employees and carriers organized on a national basis, but no agreement

could be reached. Thereupon President Wilson sent a message to Congress stating that public opinion no longer countenanced a working day of more than 8 hours, and, as a result, the Adamson Act was finally passed, "which gave the employees about what they were asking" (R. 162–163).

THE WAR PERIOD

During the war, with the Federal Government operating the railroads, management met with labor and "discussed all labor questions, from the point of view of maintaining peace and friendly relations and preventing interruption to commerce", and with a view toward the furtherance of the purposes of the war (R. 163–164).

The orders of the Director General of Railways during this period established a labor policy which recognized the right of employees to organize, prohibited discrimination against union men, and barred all interference with the exercise by railroad workers of their right to organize (R. 164).

Negotiations, in which the carriers were represented by regional directors and the employees by their unions, resulted in national agreements covering the entire country. Four adjustment boards were set up to settle disputes, one for the train service, one for the office staff and maintenance-of-way workers, one for the shop crafts, and another for miscellaneous employees. A Board on Wages and Hours and a Labor Division, under the Director General, were also created by the national agreements (R. 164–165).

When the railroads were returned to the private owners the problem of insuring freedom from interruptions of service was tackled by the enactment of the Transportation Act of 1920 (R. 165).

THE TRANSPORTATION ACT OF 1920

This act set up a Railroad Labor Board of nine members, three of whom represented the workers, three the carriers, and three the public. The Board was authorized to hold hearings and render decisions but was given no power of enforcement. The theory that all that was necessary was to have a Government board, representing all interests, hear the dispute, make a decision, and that, somehow or other, the decision would be enforced by public opinion (R. 165).

There was general dissatisfaction with the operation of the act, and a very bitter strike took place in 1922. In 1926 representatives of both sides prepared a draft which became the basis for the Railway Labor Act of 1926 (R. 165–166).

THE RAILWAY LABOR ACT OF 1926

The Railway Labor Act of 1926 created the United States Board of Mediation, a body quite similar to the present National Mediation Board. It required carriers and their employees to make and maintain agreements by collective bargaining. It also forbade each side to interfere with the other, and directed that all disputes be handled in conference by representatives of the parties (R. 166).

The act further provided that where agreements could not be reached, or disputes settled, by conference, appeal could be taken to the United States Board of Mediation, which was authorized to

mediate or to persuade the parties to agree to arbitration. These arbitration agreements were to be enforceable in the Federal courts (R. 166–167).

THE FEDERAL EMERGENCY TRANSPORTATION ACT OF 1933

The Federal Emergency Transportation Act of 1933 created the office of Coordinator of Transportation. By its provisions "yellow-dog" contracts were prohibited and the right of the employees to organize and to be free from interference by employers was guaranteed. The labor provisions of the Emergency Act of 1933 were later included in the 1934 amendments to the Railway Labor Act (R. 168–169).

THE 1934 AMENDMENTS TO THE RAILWAY LABOR ACT

By these amendments the United States Board of Mediation, which consisted of five members, was abolished, and the present National Mediation Board of three created (R. 169).

The latter has some duties very similar to those of the National Labor Relations Board. It settles disputes between employees regarding representation for the purpose of collective bargaining, and, when requested to do so, conducts elections and certifies to the employer the names of the duly designated representatives. In addition it arbitrates and mediates in disputes between employers and employees, settles strikes, and performs certain duties in connection with interpretation and application of the various collective bargaining agreements (R. 149).

Disputes over the designation of employee representatives could be handled by the old United States Mediation Board, only by agreement of the parties. In the 6 years of the Board's existence there were but nine instances in which the employers consented to the determination of employee representatives by an election conducted by the Board. To avoid the strikes threatened by the resulting dissatisfaction, the 1934 amendments included a provision empowering the new Board to investigate all such disputes, and to determine the choice of the majority of the employees. The Board is to hold elections or use any other appropriate method of making such determination (R. 169–170).

Other important provisions of the 1934 amendments to the Railway Labor Act provide that the majority of any craft or class of employees shall have the right to determine who shall represent that class or craft; that the carrier shall not interfere with the selection of representatives by employees, that the carrier must upon demand submit its pay roll to the National Mediation Board in order to facilitate its work in the conduct of elections; that the carrier shall not deduct dues for a labor organization or assist a labor organization financially or otherwise; and that the employer must treat with the employee representatives certified to him by the National Mediation Board (R. 170–171).

IV. EMPLOYER LABOR POLICIES NATIONALLY DETERMINED

A. INTERSTATE CHARACTER OF THE LABOR POLICY OF INTEGRATED FIRMS

The central management of modern large-scale enterprises customarily controls the labor policies and determines the wage scales of their local plants wherever situated. This may take the form of positive direction or acquiescence, but the responsibility is central [1] (R. 599–601).

The International Harvester Co. and the Rockefeller group are examples of the central guidance of labor relations in industrial and financial units, respectively.

THE INTERNATIONAL HARVESTER CO.[2]

"* * * One of the first company-union plans was that of the International Harvester Co. Now, the International Harvester Co. had its office * * * on Michigan Avenue, in Chicago. They set up a representation plan that was worked out in the Michigan Avenue office. It was then taken by a director of personnel or industrial relations, who handles labor relations for the management. It was taken to one plant after another of the International Harvester Co.—some in Illinois, some in New York, one down in New Orleans, one in Canada—and they asked the employees to vote on it. Most of them voted on it, accepted the plan, and set up representatives.

"Then the representatives from all these individual plants scattered all over the country set up what they call an industrial council of the 15 plants, we will say there were.

"Now, the personnel manager or director of industrial relations of the International Harvester Co. would travel from week to week to the meetings of these representatives at the various plants.

"When wages had to be fixed, they were fixed on Michigan Avenue for the twine plant down in Louisiana, and when wages were to go up or if they were to go down, and when a policy as to promotion, training, and anything else (was to be adopted), or when terms of employment were to be fixed, it was all done in Chicago (R. 222–223).

THE ROCKEFELLER GROUP AND INDUSTRIAL RELATIONS COUNCILORS, INC.[1]

Although the determination of labor policies of the Rockefeller interests was vested officially in the officers of the respective corporations, the theories of Mr. Rockefeller, as expressed personally and in print, influenced "the local policies in companies, which themselves were interstate in character." Among the interests carrying out in

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[1] Testimony of Glenn Alwyn Bowers.
[2] Testimony of William M. Leiserson.

general the Rockefeller policies were the Standard Oil units, including the New York, New Jersey, and California companies, and covering vast areas throughout the country (R. 596–597). In the case of the Colorado Iron & Fuel Co., Mr. Rockefeller, a majority stockholder, but not an officer, was responsible for the creation of an employee representation plan after the Colorado coal strike. Mr. Rockefeller's office was at the time in New York (R. 593–596).

The Rockefeller interests supplied the financial motivation of the Industrial Relations Councilors, Inc., which originated in 1922 as a unit in the staff of the law firm of Curtis, Fosdick & Belknapp, of New York. Raymond Fosdick, who for years had been personal counsel to John D. Rockefeller, Jr., was the partner in charge of this activity of the firm.

In 1926 the unit was incorporated as a nonprofit organization, having as its purpose the making of research surveys in various industries with the view of making recommendations for the improvement of working conditions and of employer-employee relationships. These services were largely for the benefit of the Rockefeller interests (R. 590–592).

Among the basic industries studied by the Industrial Relations Councilors were petroleum, coal, steel, railroads, and sugar. It investigated labor relations in various companies in the United States and made recommendations to the respective companies, which often met with lack of sympathy from the local managers (R. 659–660). Its investigations were made on an international basis for the reason that "we were working deliberately on the program that these problems (vacation with pay for wage earners and employment insurance) needed study not only on a Nation-wide basis but on an international basis, because the economics of production and distribution have their inevitable counterparts and effect on labor conditions, and with the growth of and increase of transportation facilities Europe and America and even the Orient today have been brought closer together than New York and Ohio were a couple of generations ago. For that reason we studied these problems as to their practical effect, and the significance of movement and trends on a Nation-wide basis, comparing the conditions in different districts and, as you have heard me say, on an international basis, so that American industry might be better equipped to maintain higher standards, and to build higher standards and maintain them, than it would be possible to do without knowledge of these practices that were developed" (R. 660–661).

B. GUIDANCE OF LABOR POLICY BY AN ARTICULATE NATION-WIDE EMPLOYER MOVEMENT

1. General employer organizations.

NATIONAL ASSOCIATION OF MANUFACTURERS [1]

The National Association of Manufacturers was organized in 1898 to resist the growth of the trade-union movement (R. 601–602). It was founded by employers with a hostility toward trade-unionism,

[1] Testimony of Glenn Alwyn Bowers.

which has been characteristic of its membership ever since (R. 602–603).

Today a majority of American workers engaged in manufacture are employed by firms affiliated directly or indirectly with the association (R. 606). These firms produce a majority, both by volume and by value, of the goods manufactured in the United States (R. 606–607). Their number runs into the thousands. Some are affiliated directly, others through State and national organizations which affiliate as bodies, and many through the individual membership of their officers (R. 604–605, 607). They are, for the most part, the smaller manufacturing concerns of the country (R. 608–610).

The association is supported by membership dues (R. 608). It lobbies on its members' behalf (R. 623) and publishes literature written from the employers' viewpoint (R. 624–625). By its literature and its meetings it influences the labor policies of its individual members (R. 625). In fact, since the latter contribute to the financial support of the organization, they expect in return to be told what to do in regard to their individual labor problems (R. 626).

NATIONAL INDUSTRIAL CONFERENCE BOARD [1]

The National Industrial Conference Board is a corporation composed entirely of employers. It is supported by membership dues and is engaged in research activities covering the various economic problems that have aspects of employer interest. Its research findings are made available to its members and it is the chief source to which employers go for information relating to labor and industrial relations (R. 627–628).

CHAMBERS OF COMMERCE [1]

Employers are organized into three kinds of chambers of commerce—local, State, and national (R. 635). The local organizations do not ordinarily deal with problems of labor relations, but some of the larger cities—Rochester, for example—have an industrial relations committee functioning as a part of the local chamber of commerce. In the 1920's a great many chambers of commerce throughout the United States were actively engaged in the promotion of the American plan movement which gave rise to American Plan Associations in many cities. These associations had as their primary purpose the destruction of unionism in industry. The Los Angeles and Cleveland Chambers of Commerce were particularly active in the American plan movement (R. 636). In Rochester the employers and manufacturers are all members of the local chamber of commerce and engage openly, through the chamber, in a campaign against trade-unionism (R. 657).

THE "AMERICAN PLAN" OPEN-SHOP MOVEMENT [1]

"It (the open-shop movement) began immediately after the armistice, in 1919, and it ran on through 1922, when it was most effective. It continued a little later, but it was most effective during this period,

[1] Testimony of Glenn Alwyn Bowers.

when the employers were organized * * * locally in this open-shop movement, which, of course, means antiunion movement.

"This was the so-called American-plan movement * * * and millions of dollars were spent by employers in order to break up the unions that the employees were successful in organizing during the war period, when, under the protection of the War Labor Board, they could organize for collective bargaining.

"The great majority of the strikes (after the war) occurred as the result of this attitude of the employers; and the employers, I might say * * * especially in the important industries where large-scale production is carried on through integrated firms * * * were successful pretty largely in eliminating unionism" (R. 729).

THE LEAGUE FOR INDUSTRIAL RIGHTS [3]

The League for Industrial Rights was organized in 1901 as the American Anti-Boycott Association. It is composed of, and financed by, employers interested in the adjudication of cases relating to the rights of the employer and of the individual employee, with the view of protecting the interests of the employer. As the legal arm of the employers in labor relations, it makes use of the case of the individual employee to establish principles favorable to its members (R. 631).

The league has handled and financed many court cases for employers, including the well-known Danbury Hatters', Coronado Coal, and Bucks Stove and Range cases. It publishes a monthly journal (R. 630).

THE AMERICAN MANAGEMENT ASSOCIATION [1]

The American Management Association is the modern counterpart of the Employment Managers' Association and deals with various problems of management and labor. The association does not act as an adviser to employers but serves as a meeting ground where employers can exchange opinions and experiences in the matter of labor relations (R. 638–639). The discussion of company-union problems at the Association's meetings has contributed to the growth of the company-union movement (R. 638–639).

2. Specialized employer organizations.

THE NATIONAL METAL TRADES ASSOCIATION

The National Metal Trades Association concerns itself almost exclusively with labor problems. Its members are manufacturers who use the products of steel mills. They produce a large proportion of the steel goods manufactured in the United States (R. 614). This association is more definitely engaged in the formation of a labor policy for its members than any other trade group. It maintains an educational department and sends its representatives into various parts of the country to teach manufacturers how to conduct their labor relations (R. 615). Members of the National Metal Trades Association use the blacklist to a considerable extent (R. 652).

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[1] Testimony of Glenn Alwyn Bowers.
[3] Testimony of David J. Saposs.

NATIONAL AUTOMOBILE ASSOCIATION

The National Automobile Association was formerly called the Automobile Chamber of Commerce. Substantially all of the automobile manufacturers in the United States belong to it. It interests itself to a certain extent in the labor policies of its members (R. 612–613).

FUNCTIONAL EMPLOYERS' ASSOCIATIONS, GENERALLY

There is, a present, an increasing tendency on the part of the various manufacturers' trade ascociations to incorporate into their program of activity, discussions of labor policies and educational programs for the assistance and information of their members. This "is inevitable because labor relations are becoming more and more conspicuous as a problem which deserves attention and as a problem about which something can be done if approached in the same, or with the same thoughtfulness that other problems of production are approached" (R. 618, 642).

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V. STEEL—AN EXAMPLE OF MODERN INDUSTRIAL INTEGRATION

A. PLACE OF IRON AND STEEL IN THE AMERICAN ECONOMIC SYSTEM[1]

The iron and steel industry ranks second among the manufacturing industries of the United States in number of workers employed. In value of production steel works and rolling mills take third place (R. 237). The industry's output of final products for the respective years 1919, 1929, and 1933 was as follows: $2,828,902,376; $3,365,788,805; and $1,123,889,000 (R. 238). It employed 400,000 men in 1929, and even in 1933 as many as 288,000 (R. 236).[2]

"Steel production * * * is an industry furnishing materials utilized by other producers. That is, rails are sold to railroads; structural shapes and plates are sold to builders and other construction workers; tin plate to canning companies and similar concerns * * *." "* * * with reference to the distribution of steel * * * the automotive industry takes something like 20 percent (of the entire output of the steel industry) or a little over. Now, the railroads and builders take about 25 percent or perhaps a little more; that is, the two together. Then the manufacturers of containers take about 8 or 9 percent. About 5 and a fraction percent of the steel is exported. Then you have smaller amounts going to oil, gas, and water concerns and to our machinery, and quite a number of other lines of consumption." Because of the universal use of steel and steel products in American industry it has been significantly stated that the steel industry is the barometer of American trade (R. 246–247, 261).[3]

B. STEEL AS A MODERN LARGE-SCALE ENTERPRISE[1]

1. Massed investment.

"The manufacture of tonnage steel is large scale; that is, the producing process is most economical when performed by units whose individual output is large. For example, the most economical blast furnace today is one whose output is 1,000 tons for 24 hours and requires an investment of some 3 or 4 million dollars. In the report of the Industrial Commission of 1898–1902 it was estimated that it would require at least 20 to 30 million dollars to equip properly an up-to-date (at the time) steel plant. Today it would require, in the field of tonnage steel, an investment of at least three times those figures" (R. 247).

2. Concentration of ownership.

The total capacity of all the steel plants in the country is approximately 71,431,089 gross tons. Of this total amount the United States

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[1] Testimony of Abraham Berglund.
[2] See Board's exhibits 17 and 18, infra, p. 157.
[3] See Board's exhibit 25, infra, p. 160.

Steel Corporation has a capacity of 27,349,900 gross tons and the Bethlehem Steel Corporation 9,360,000 gross tons, the two companies having a combined capacity of a little over 50 percent of the total of all steel plants in the country (p. 272).

The total capitalization of all steel companies in the United States is $4,738,496,000; of this amount $1,962,366,650 represents the capitalization of the United States Steel Corporation and $621,960,789 that of the Bethlehem Steel Corporation. Thus, the combined capitalizations of the United States Steel Corporation and the Bethlehem Steel Corporation amount to a little more than half of the total for all of the steel companies in the country (p. 273).

These large concerns, and others like them, control the sources of the raw materials which enter into the manufacture of steel, and also much of the means of transportation whereby these raw materials are shipped from their source to the point of manufacture. This is the so-called vertical-combination control (R. 273–274).

3. Integration of production.

"Integration of the successive stages in the production process is also a feature of the steel business. This integration is necessary to conserve the sources of raw materials and meet sudden and great demands for products, as well as eliminate certain waste due to independent operation in these stages. With regard to the latter point, the placing of rolling mills close to steel furnaces and steel furnaces to blast furnaces enables the producer to shift his molten pig iron from the blast furnace to the steel furnace, and the hot steel to the rolling mill without the necessity of a great amount of reheating, such as would be required if the pig iron were allowed to cool before being turned first to the Bessemer converter or open-hearth furnace and the steel allowed to cool before the rolling process was put into operation.

"It has been estimated that steel producers save from 1 to 2 dollars per ton by the elimination of this waste. An organization like the (United States) Steel Corporation, with an average annual production of 20 million tons, thus saves from 20 to 40 million dollars a year by such integration alone. Similar savings are incurred by control of ore production on the Great Lakes in the use of highly specialized ore carriers and efficient loading and unloading devices in the various ports controlled by this great organization.[3]

"Now, steel manufacture is a succession of processes, but all under one great control. The successive stages representing these processes have become one vast unified system where each step is part of one great machine operation; that is, from the mining of the ore in Minnesota and Michigan to the rolling of hot steel into rails, billets, plates and sheets, and other finished steel products in the Pittsburgh and Chicago or Gary areas of Pennsylvania, Illinois, Indiana.

"In other words, you have a process which is practically continuous from the mining of the ore to the sale of the finished product. It is really part of one vast operation" (R. 247–248).

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[3] See Board's exhibit 25, infra, p. 160.

C. WORLD-WIDE MARKET FOR RAW MATERIALS[1]

1. Manganese from four continents.

Manganese is one of the many materials used in the manufacture of steel. "The manganese used in ordinary steel manufacture, that is, in the manufacture of tonnage steel * * * comes mainly from three great sources. You have a considerable amount imported from Brazil * * *. A somewhat higher grade of manganese ore comes from India, and then a third very important source for producers of thorough manganese in England and producers in the United States is Russia. Thus three areas furnish the greater part of manganese used in the production of high-grade thorough manganese, such as is used in the manufacture of ordinary tonnage steel. * * *. A certain amount is domestic manganese. In 1933, 18,558 long tons of domestic manganese was used in steel manufacture in the United States, whereas during the same year 95,074 long tons of imported manganese ore were used for the same purpose" (R. 257).

Domestic manganese ore comes mainly from Montana; other Western States and Virginia are also sources of supply (R. 257). No substantial amount of domestic manganese comes from the States in which steel plants are located (R. 257).

2. Iron ore from Minnesota, Michigan, Cuba, and Chile.[4]

The leading iron ore producing areas in the United States are located in Minnesota and Michigan. Eighty-five percent of the ore used in the manufacture of pig iron in the United States comes from the Lake Superior region centering about the areas in the two States mentioned above (R. 244–249). This iron ore goes by steamer from this Lake Superior region to the Chicago region (Chicago, Ill., and Gary, Ind.) and to the ports and blast furnaces on the southern shore of Lake Erie. A great amount is reshipped from the Erie port to the Pittsburgh region, to Harrisburg, Pa., and to Sparrows Point, Md. (R. 250–251). The Bethlehem Steel Corporation secures a great deal of its iron ore from Cuba and from Chile (R. 274).

3. Scrap from almost every State.

The principal raw material used in the manufacture of steel, aside from fuel, is pig iron or a combination of pig iron and scrap (R. 243). In the open-hearth process, 50 to 60 percent of the material used is scrap (R. 259).

A great deal of this scrap consists of waste material from old steel mills or used steel from old rails and similar sources. It comes from all parts of the country. Some steel companies in the United States—the Pacific Steel Co. on the Pacific coast, for example—use nothing but scrap in the manufacture of steel.

Steel scrap is itself a considerable business, with its own trade association and with assembly yards in various centers of the United States. There are firms in almost every State which do nothing else but gather scrap and ship it to the steel manufacturers at their plants. With the growing use of the open-hearth furnace, it is practically impossible to run the modern steel enterprise without the use of scrap. The production and sale of scrap play a part in the economic price structure of fabricated steel (R. 258–261).

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[1] Testimony of Abraham Berglund.
[4] See Board's exhibits 20, 21, 22, infra, pp. 157–159.

4. More than two-thirds of the fuel used in steel production comes from States which do not produce steel.[5]

Of the 39,500,000 tons of coal used in the various States in the production of steel, only 11,200,000 tons of this amount comes from the coal mines in the States where it is used (R. 254). Some of the important steel-producing States mine practically no coal at all. Ohio consumes 5,200,000 tons of coke in the manufacture of steel, all of which is imported from other States (R. 255).

D. STEEL PRODUCTION AND DISTRIBUTION AS AFFECTING INTERSTATE COMMERCE[6]

1. The national market for iron and steel.

The market for the products of the iron and steel industry is not local but national. In prosperous times it tends to become international (R. 275–276). The steel that is used by the railroads or by the building industry, for example, is likely to be used anywhere in the country (R. 265). There is consequently a continuous flow from the mining areas to the steel mills and from there throughout the United States (R. 268).

2. Dependence of the industrial world upon steel production.

"Q. What would be the effect of a cessation of operations in the steel industry upon the flow of raw materials?

"A. There would be a very serious interruption; the plants are dependent upon them" (R. 277).

"Q. What would be the effect of a cessation of operations in the steel industry upon the flow of raw materials?

"A. That would be a very serious interruption. The plants are dependent upon that.

"Q. What would be the effect upon the other industries, dependent upon their product?

"A. It would affect them, and they wouldn't be able to get their necessary material.

"Q. That would apply to all of the consuming industries?

"A. All the industries which consume the products of the steel industry" (R. 277).

3. The interstate distribution of iron and steel products of the Pittsburgh area.[7]

"Q. What does this table (Board's exhibit 28) show with respect to the interstate distribution of iron and steel products for mills in the area of Pittsburgh?

"A. It shows that the greater part goes out of that area. In other words, it is a part of commerce.

"Now we have here the total distribution 1,531,000 net tons of products which are subject to code regulations and that represents about 20 percent of the national total.

"Now that was for a period of 3 months ending June 30, 1934. Now, of that alone 517,000 tons, net tons, were distributed to various points within Pennsylvania, but you have over against that sum something over 1,000,000 tons which goes out of Pennsylvania. In

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[5] See Board's exhibits 23 and 24, infra, pp. 159–160.

[6] Testimony of Abraham Berglund. See also Board's exhibits 20–26, 28, infra, pp. 157–162.

[7] See Board's exhibit 28, infra, p. 162.

fact, only about a third of that remains in the State of Pennsylvania, and, of course, Pennsylvania being a State where many of the industries dependent upon steel are located, there naturally would be a very considerable consumption of steel products within Pennsylvania, but even making allowance for that, you will find that about two-thirds of the total output goes outside the State of Pennsylvania" (R. 266–267).

E. LABOR RELATIONS IN STEEL[8]

1. Harmonious relations in the premerger period.

"* * * the Amalgamated Association of Iron and Steel Workers came into being in 1876 and grew fairly rapidly, until it became the dominant factor so far as labor was concerned, in the iron mills in the Pittsburgh district, and to a considerable extent in other districts.

"During the eighties the union established itself pretty thoroughly in those mills and the relations with the employers seemed to have been rather amicable * * *. The unions' greatest success in that area was in the Homestead plant of what became the Carnegie Steel Co." (R. 294–295).

The Amalgamated Association was quite successful in organizing other plants. It secured working agreements quite generally in the iron industry and to a lesser extent in steel. The Homestead plant, then the leading plant of the industry, operated continuously under an agreement from 1882 or thereabouts until the famous Homestead strike of 1892.

In general, the period up to 1892 was characterized by harmonious relations between the Amalgamated Association and the companies (R. 295–296).

2. Early strikes resulting from the antiunion policies of the merged corporations.

THE HOMESTEAD STRIKE OF 1892

"Initially that strike came about because of the demand for an increase in wages, which the company refused, but it became evident in a short time that it was the intention of the company to do away with the union, and before the strike had been on for more than a week or so, everything else was lost sight of and the strike was carried on for the purpose of preserving the union" (R. 296).

The Homestead plant was owned by the Carnegie Steel Co. H. C. Frick, the president of the company, was from the very beginning determined to have his way with respect to labor conditions throughout the Carnegie enterprises. Before the strike began he made arrangements with the Pinkerton Detective Agency to supply him with a large number of guards, several hundred, who were brought into the Homestead plant in the night, on barges on the Monongahela River. When they attempted to land, the strikers met them, and a battle ensued which resulted in some loss of life and a considerable degree of injury and resulted in the surrender by the Pinkertons, and they went out of town according to an agreement that had been made by the union. After that the State militia was called in, and

[8] Testimony of John A. Fitch.

the town was under military guard from then on to the end of the strike (R. 297).

The Homestead strike involved 2,500 employees and lasted from June until September 1892. It resulted in a complete defeat for the union, not only in the Carnegie mills but in other parts of the industry. The Carnegie Co. prevented the revival of the union in its plant by immediate and summary discharges of those who sought to organize (R. 297–298).

UNITED STATES STEEL CORPORATION STRIKE OF 1901

Shortly after the organization of the United States Steel Corporation in 1901 its board of directors declared that trade-unionism would not be recognized in any plant where it was not at that time in existence. The union nevertheless attempted to have its recognition extended, and when the company and its subsidiaries refused to deal with the union a strike was called which lasted through a considerable part of the summer of 1901 and ended in failure. Thereafter the United States Steel Corporation gradually cut down the number of mills in which the union was recognized (R. 299–300).

UNITED STATES STEEL CORPORATION STRIKE OF 1909

In 1909 United States Steel Corporation notified the Amalgamated Association that it had withdrawn union recognition in all of its plants. As a result a strike was called for the purpose of maintaining the union. This strike ended in a complete failure for the Amalgamated Association. The United States Steel Corporation has never dealt with the union since that time (R. 299–300).

THE BETHLEHEM STEEL STRIKE OF 1910

In 1910 there was a strike at the Bethlehem plant of the Bethlehem Steel Co. The machinists had appointed a committee to negotiate with the management for the elimination of Sunday work. The company declined to negotiate and discharged the members of the committee. The machinists thereupon went out on strike, and other departments followed. The strike continued for a long time but was unsuccessful (R. 301).

3. Attitude of the great steel companies toward labor organization, 1910–19.

The attitude of the Bethlehem Co. toward the attempts of its machinists to engage in collective bargaining was typical of the attitude of the other large steel companies toward labor and labor organizations during the 1910–19 period (R. 302).

"They (the large steel companies) were wholly opposed to labor organization, and labor organizations made no headway. That was a period when the attitude * * * continued to be the sort that I have described, not only opposition to trade-union organization, but opposition to any sort of collective action, such as the appointment of a committee" (R. 302).

"A characteristic institution of the steel industry (at the time) was a spy system,[9] which brought reports to the management of attitudes on the part of the men, and indicated their interest in unionism and

[9] See Board's exhibits 38 and 49, infra, pp. 163, 169.

meetings that they might hold, and when it was known that they were going to have a meeting, the foreman would usually be sent to stand in front of the place of meeting to see who was going to attend, and take the names, if possible, of men who were attending. Sometimes there were cases where men held a meeting on a vacant lot at night and flashlight photographs were taken in order to acquaint the management with the personnel of the persons present" (R. 302–303).

4. The resulting steel strike of 1919.

At the 1918 convention of the American Federation of Labor in St. Paul, a resolution was adopted to the effect that a committee be appointed for the purpose of carrying on a campaign to organize the steel industry (R. 303). This committee was appointed and it carried on its work in all the principal steel centers of the United States until a very large proportion of the workers in the industry had indicated their intention or actually joined the union (R. 303–304).

"Having succeeded in organizing the industry, the officers of this committee addressed a letter to Judge Gary asking for a conference for the purpose of dealing with grievances and negotiating an agreement, and Judge Gary and the other officials of the steel companies refused to grant such a conference.

"They replied that this organizing committee didn't represent their men, and that they didn't have any organization in the mills of the United States Steel Corporation, and therefore there wasn't anyone to meet.

"John Fitzpatrick (of the Chicago Federation of Labor, who was chairman of organizing committee) in his reply said, that if that was their attitude, there would be no way by which he could prove his leadership except by putting a strike into effect, and so the strike came shortly after that and in the neighborhood of 350,000 men went out on strike in the various mills of the country" (R. 304–305).

The primary cause of the steel strike of 1919 was the refusal of the steel employers to recognize the right of their workers to organize for collective bargaining. Some of the grievances which were sought to be adjusted through collective bargaining were low wages, the 12-hour day and the 7-day week (R. 305).

This steel strike of 1919 began about the middle of September 1919, and was called off sometime in January 1920. "It resulted in some of the very large mills of the country being practically idle and the plant at Johnstown, Pa., entirely closed down. The plants of the Carnegie Steel Co. in the Pittsburgh district were very seriously crippled, and the steel industry * * * was very seriously affected in September and October. Then men began to drift back to work until the situation was not so serious for their companies, but probably 100,000 men were out at the time the strike was called off" (R. 306).

The large steel companies resorted to the device of general newspaper publicity, designed to convince the public that the strike was revolutionary in character (R. 306–307).

"It was claimed at the time that the purpose was to set up a soviet form of government and that was very generally circulated and believed to a very considerable extent by newspaper readers. Full-page

ads appeared in all of the Pittsburgh newspapers making allegations of that sort" (R. 307).

Furthermore, "there was a very active cooperation with the steel companies on the part of the public officials. The sheriff of Allegheny County issued a proclamation that no street meetings could be held by more than three people or perhaps by as many as three people, and if there were as many as three people gathered on the street corner the deputies were authorized to disburse them" (R. 307).

"The mayors of towns, or the burgesses, as they are called in the village form of government in Pennsylvania, took an active part in preventing the union from holding the meetings, and the famous statement of the mayor of Duquesne is well known, I believe, when he said that if Jesus Christ wanted to hold a meeting to organize a union in Duquesne, He could not hold it" (R. 307–308).

The steel strike of 1919 failed. But, in connection with one of its major issues—the 12-hour day—"it is interesting to note that 3 years afterward on the initiative of the President of the United States the companies decided to abandon the 12-hour day" (R. 308).

5. 1919–33, a period of unfair labor practices.

During the period 1919–33 the attitude of steel employers "continued to be one of opposition and of determination to maintain the nonunion status of their mills * * *. In the absence of organization they (the steel workers) did not feel free to assert themselves. No one wanted to jeopardize his own job and individuals here and there would be picked off if they showed themselves active" (R. 309).

The period was characterized by the pursuance of unfair labor practices. In particular, the steel companies continued the practice of espionage, as is shown in several publications, including Sidney Howard's book, The Labor Spy, and the study made by Frank Palmer of conditions in the iron mines operated by the steel companies in Minnesota.[11]

6. The effect of recent protective legislation.

IMPETUS GIVEN TO ORGANIZATION

"After the passage of the Recovery Act, with its section 7A, there was an impetus in the direction of organization * * *" (R. 311) * * * The impetus given to unions by the passage of the Recovery Act, particularly with section 7A, manifested itself in the steel industry as elsewhere and the Amalgamated Association (of Iron, Steel, and Tin Workers) increased its membership to a considerable degree (R. 312).

"* * * In view of the fact that section 7A declared that the workers do have a right to organize, and that they do have a right to select representatives and through them to bargain with their employers, and that it is illegal for anyone, employers or others, to interfere with that right, they felt that they were now freed from the restrictions that the steel companies and other companies had imposed on them, and that now it would be safe to organize and they would not lose their jobs.

"So the Amalgamated Association considerably increased its membership at that time, and there began to be a good deal of feeling on

[11] See infra, p. 69.

the part of the membership that some action should follow, and that they should get an understanding with the steel industry.

"This pressure became so active on the part of a certain group in the union that they called themselves the Rank and File Movement, in order to differentiate themselves from the officers of the union, who were not moving very much, as it seemed to them (R. 312–313).

THREATENED STEEL STRIKE OF 1934

"As a result of this, at a special convention held in Pittsburgh by the union, it was decided to make a demand upon all of the steel companies for recognition, and so in one way or another, either by personal word or by communication through the mail, the managers of most of the plants in the major steel companies of the country were communicated with and asked to meet a committee of the union.

"That demand was refused in every case and, as a result of that, the unions called a convention and voted a strike" (R. 312–313).

"The administration in Washington interested itself in the matter, and it was at about that time that resolution no. 44 * * * authorizing the President to appoint special boards to deal with particular industries was passed, and, as you know, a Steel Labor Relations Board was created."

"In view of that the union decided not to call a strike and, instead, to place its demands and its grievances before that board" (R. 312–314).

7. The company-union movement since 1933.

GROWTH OF THE COMPANY UNION

During this period "the company-union movement grew * * *, more rapidly than the union movement affiliated with the American Federation of Labor, and the reason for it was that the companies, recognizing that they would be called upon to deal with their employees collectively, as required under section 7A (of the National Industrial Recovery Act), felt that they could do so more advantageously to themselves if they had an organization of their own employees alone, not influenced by any outside agency, and, therefore, without leaders who were not their own employees" (R. 314).

"That movement was very widespread throughout the industry and, I suppose, in all the important steel plants of the country such company unions were set up entirely on the initiative of the employer; and in the majority of cases, I should say, set up under conditions so as to leave a considerable part of the control of the organization in the hands of the companies" (R. 314–315).

The companies exercised control over these company unions from the time of their inception. A great many steel corporations throughout the country sent letters, identical in many cases, to their employees, in which it was stated that the company had inaugurated a plan of employee representation, and that on a certain day in the near future an election of representatives of the plant employees would take place. The various presidents of the subsidiaries of the United States Steel Corporation sent identical form letters to their employees. In a great number of cases these employee representation plans were instituted without any vote on the part of the employees as to whether or not they would accept them (R. 315).

The company unions were supported by the companies in various ways. The representatives elected by the men were encouraged to hold meetings, they met with the company officials on company time, and they received their equivalent of the pay that they would have earned if they had remained at their jobs. In some companies, including Weirton Steel, representatives were paid a salary in addition to their regular wages.

RECENT REVOLT BY COMPANY UNIONS AGAINST EMPLOYER DOMINATION

In August of 1935 the majority of the representatives under the company-union plan at the South works of the Illinois Steel Co. voted to organize an independent union. After preliminary organization an independent union not connected with the American Federation of Labor, but not a company union, was established by this hitherto company-union group. At the present time this organization has a membership of several thousand (R. 317).

At Gary, Ind., the representatives of the company union recently voted to refer to the membership at large the question of affiliation with the American Federation of Labor. A majority of the representatives were in favor of affiliation (R. 317).

"In the American Sheet & Tin Plate Co. an effort was under way, or is under way now, to create what would be in effect a company-wide union, and they held a convention last September for the purpose of revising their constitution and making it more completely a workers' movement, and there is a similar movement now going on in the plants of the Carnegie Steel Co. in the Pittsburgh district" (R. 317–318).

The action taken by these company unions is not activated by the refusal of employers to grant their demands. It is due to a growing dissatisfaction with the company union set-up (R. 318).

"Q. Would you say that the recent development in company unions indicated that that method of organization did not satisfy the employees in their desires to organize and bargain collectively?

"A. I should say that it indicates that, and something else * * * (the companies) have given the men an opportunity to express themselves that they didn't have before. The opportunity to get a grievance up for consideration exists, under this plan, as it never existed before. Instead of discharging men because they presented a grievance, the company-union plan almost insists upon their presenting grievances. Now, the men, having had an opportunity to do that, became dissatisfied, not altogether because the plan worked so badly, * * * but because a plan which works better than what they had before reveals to them how it could be still better, if they had something more completely in their own hands" (R. 322–323).

8. The use of Coal and Iron Police and of deputy sheriffs to prevent organization for collective bargaining.[13]

It has been the practice of employers in the steel industry in Pennsylvania to employ special police known as Coal and Iron Police, who were appointed or commissioned by the State and paid for by the individual employers. The Coal and Iron Police were used "for the prevention of the organization of workers in the mines and mills and

[13] Testimony of Charlotte Carr.

for the protection of property and the prevention of picketing in times of strikes * * *. They were, to all intents and purposes, officers of the law in uniform with arms, and they used physical force to see that gatherings of individuals were dispersed, that parades were interrupted, and that actual picket lines were broken up." As early as 1931 "Governor Pinchot refused to give commissions to the Coal and Iron Police, although the law permitting such commissions was still on the statute books."

Following the revocation of these commissions, the sheriffs of the various counties of the State resorted to the practice of appointing deputy sheriffs whose services were paid for by the employers and "who, in personnel as well as in responsibilities, were identical with the people who had been previously called Coal and Iron Police" (R. 279–280).

In Fayette County, during a coal strike in July 1933, the activities of the deputy sheriffs "were so definitely against the civil rights of the people, including their rights to organize, that Governor Pinchot was obliged to order the National Guard into the county to preserve order." In October 1933, during a steel strike, the sheriff of Beaver County appointed 150 deputy sheriffs in addition to the regular corps of 100 to prevent picketing. The activities of these deputy sheriffs resulted in riots, causing the loss of one life and a great number of injuries, as reported by a special commission appointed by Governor Pinchot to investigate [14] (R. 281–282).

In the summer and early fall of 1934, complaints reached the Governor and the Secretary of Labor of the State "to the effect that the (Aliquippa steel) workers were not being permitted to organize in accordance with section 7A of the National Industrial Recovery Act, and asking assistance from the State police to protect their civil liberties." The State Department of Labor thereupon sent its mediators to investigate the situation. In October 1934 a hearing in the matter was held by the National Steel Labor Relations Board. This hearing was postponed "and the workers who had come to testify at the hearing expressed themselves as being afraid to go home because of the physical danger that they felt that they would be in because of their daring to testify." This fear on the part of the workers was found to be warranted, and the "Governor of Pennsylvania immediately sent the State police into the town of Aliquippa for the protection of the civil liberties of the community" (R. 283–284).

"The evidence all leads to the conclusion that were it not for the presence of the State police, and their protection, the information that was made available to our mediators could not have been given because of the fear of the workers in giving that testimony" (R. 284).

It appears from the investigation of the situation at Aliquippa made by the State Department of Labor that union organizers who came there to attempt to organize the steel workers were treated roughly by the deputy sheriffs and the company police. Steel workers who went to Ambridge, a neighboring town, to attend union meetings were followed and threatened by the company police. Actual physical harm came to employees who attended these meet-

[14] Pennsylvania Department of Labor and Industry, publication no. 138.

ings. Employees who were members of the union were found by the investigation to have been discriminated against by discharge and reduction of working hours. Police had entered the homes of workers in Aliquippa and made searches of their personal belongings without a warrant to enter (R. 284–286).

The report stated further "that none of the union members in the community were permitted to rent any hall for the meetings of the union workers in the town of Aliquippa up until the point that the State police came into the town" (R. 286).

The workers had asked the National Steel Labor Relations Board to conduct an election at the Jones & Laughlin plant to determine the bargaining agency by majority vote. The special investigators of the State "definitely recommended that an election be held, as the one way to settle the question, as to whether or not the workers were organized and might bargain collectively with their employers * * *" (R. 286).

The reports in the files of the Pennsylvania Department of Labor and Industry show that the situation which existed at the Jones & Laughlin plant at Aliquippa was no different from that of most of the steel towns in the western part of Pennsylvania, particularly where the workers lived in a company town (R. 287). At every one of these towns disorder began to grow "at any plant at which there was any indication on the part of the workers (of their desire) to organize" (R. 287–288).

9. Espionage in steel.[15]

The practice of espionage is, and always has been, widespread in the steel industry (R. 691–692).

The Congressional investigators of the Homestead strike found as far back as 1892 that the Carnegie Steel Co. had made use of a Pinkerton espionage service, which it characterized as "an utterly vicious system, responsible for much of the ill-feeling displayed by the working classes" (R. 674–675).

The hearings of the Senate Committee on Labor and Education investigating the steel strike of 1919 show the same policy to have been pursued by the United States Steel Corporation. Judge Gary, the company's chairman, testified as follows:

> *Question.* Have you a secret service organization among your employees at any of the subsidiary plants of the steel corporation?
>
> *Answer.* Well, Senator, I cannot be very specific about that, but I am quite sure that at times some of our people have used secret service men to ascertain facts and conditions (R. 678).

The commission of inquiry of the Interchurch World Movement [16] reported that documents submitted to it by steel companies, as proof of violence committed by workers (but which failed to show any such violence), included some 600 spy reports from operatives of the Corporation Auxiliary and a number of communications between companies exchanging such reports (R. 676).

The commission found that the United States Steel Corporation had circulated 1,200,000 copies of a circular which, prefaced by a

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[15] Testimony of Heber Blankenhorn. See also Board's exhibits 38 and 40, infra, pp. 163, 169.

[16] Commission of Inquiry, the Interchurch World Movement, Report on the Steel Strike of 1919 (1920), and Public Opinion in the Steel Strike, Supplementary Reports (1921). See excerpts, Board's exhibit 40, infra, p. 169.

commendatory letter by Judge Gary, defended the company's espionage activities. It read, in part: "Does anyone doubt the wisdom, justice, and the necessity of the spy on the part of the United States Steel Corporation in sheer self-defense?" (R. 678–679).

Frank L. Palmer, in a study entitled "Spies in Steel",[17] has set out an extensive series of records in photostatic form of the espionage system of the Oliver Mining Co., a subsidiary of the United States Steel Corporation. It is an accurate and reliable study based upon a first-hand investigation, and no attempt has ever been made to refute or contradict it (R. 681–682).

It reveals that labor spies were recruited from among union and nonunion workers. Full records, photostats of which are in the book, were kept in company headquarters of the personal history of its workers. The records showed organizations to which each man belonged, the date on which he joined, and the dates on which he paid dues. They showed further all contributions made by the employee to any labor organization, "subscriptions to a labor paper, letters written to a labor paper, letters written to another worker." In some cases they constitute an exact history for a period of years. The photostats also show the exchange of some of these records with designated officials of the Illinois Steel Co. and of the Carnegie Steel Co. of Pittsburgh (R. 682).

The men hired for espionage purposes worked at ordinary jobs for the usual salary, and received $125 to $160 a month in addition (R. 685). They were instructed to join as many organizations as possible, and a number of them actually became officers of labor unions (R. 683–684).

The spies' reports were mailed to lockboxes held in fictitious names, from which they were removed by officers of the Oliver Mining Co. They were then sent to designated officers of the company, and ultimately to the president, and the information was recorded on cards. Photostats of some of these cards show pencil notations regarding dismissal of individual employees. Several men whose labor activities were thus reported were found by Palmer to have been subsequently discharged (R. 684–685).

"In 1933 there was laid before the N. R. A. steel code hearing personal testimony of a visit and investigation of the headquarters of Charles W. Cuttle of the Carnegie espionage system, by Mr. Palmer (R. 685).

"* * * He submitted evidence of continued espionage there, from his personal investigation, disclosing photostatic cards in the headquarters of Mr. Cuttle in the Carnegie Building, and spy reports there on his desk, that were discussed by him with Mr. Cuttle—so that the system was in existence in July 1933" (R. 686).

"In the record of the hearing before the National Steel Labor Relations Board held in Pittsburgh November 17, 1934, on the complaint of *Beaver Valley Lodge of the Amalgamated Association of Iron, Steel, and Tin Workers* v. *Jones & Laughlin Steel Corporation*, pages 196 and 197, I find a record of the cross-examination of Superintendent Harry Saxor (R. 686) * * *. It shows the admission of the existence of an espionage system" there (R. 687–688).

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[17] Labor Press of Denver, 1928.

In the summer of 1934 J. P. Harris, secretary of the joint council of the Portsmouth lodges of the union, was approached by a man who introduced himself as J. C. Boyer, of New York, who offered him an out-of-town job. Boyer left a Cleveland post-office box address. One year later Boyer reappeared and made the same offer. Two days after that a P. W. Wilson, professing to represent a Washington newspaper system, offered Harris a responsible newspaper position in that city, giving the same Cleveland lockbox address as Boyer. In the early part of 1936 Boyer repeated his offer. It later appeared that Mr. Boyer was an operative employed by the Railway Audit and Inspection Co.'s special industrial service, a well-recognized professional espionage and strikebreaking organization (R. 689–690).

In another case, "in the summer of 1935 a man who said he was a steel worker, and named Alfred R. Kinlow, approached the officers of the lodges, presenting a withdrawal card from an out-of-town amalgamated lodge, and requesting and wanting to know where he could find the union officers, and wishing to attend the union meetings which he was permitted to do until it was discovered that his credentials were false, by checking back with the lodge from which he was supposed to have come. He was thereupon barred from the meeting."

"Subsequently he managed to produce other credentials and was permitted to attend the meeting, at about the same time that Secretary Harris happened to obtain a letter from a union in Youngstown stating that Kinlow was an operative of the National Service, Inc., of Youngstown, and that he had with him a list, which list was given, consisting of the seven principal officers of the union, whom he was to contact and eliminate if possible, from the union activities. * * * This list was read at the meeting, and Secretary Harris already had a committee escort Kinlow from the hall.

"In leaving, Kinlow's comment was: 'Well, this has happened to me before.' He was requested to leave town at once; in fact, he was put into an automobile just ahead of five auto loads that came from the union in pursuit. The union officials said that they did not want any murder committed, and they facilitated his getting out of town.

"Subsequently, Kinlow—whose real name was Wolnick—was traced to Terre Haute, where he is still an operative of the National Corporation Service", a well-known espionage and strikebreaking agency (R. 690–691).

PART II

TEXTUAL MATERIAL, TABLES, AND CHARTS INTRODUCED AS EXHIBITS

90591—36——6

FINDINGS AND RECOMMENDATIONS OF OFFICIAL BODIES CONCERNING CAUSES OF INDUSTRIAL UNREST

EXCERPTS FROM THE REPORT OF THE UNITED STATES STRIKE COMMISSION ON THE CHICAGO STRIKE OF 1894 [1]

The United States Strike Commission was appointed on July 26, 1894, by President Cleveland. It consisted of three members—Carroll D. Wright, chairman, Commissioner of Labor; John D. Kernan; and Nicholas D. Worthington.

The Commission examined 111 witnesses.

It reported that Federal intervention in the breaking of the railway strike consisted not only of numerous and broadside injunctions in behalf of the Government issued by the Federal courts, but of 1,936 Federal troops ordered by the President and some 5,000 deputy marshals appointed by the United States marshal.

In considering the causes of the strike, the Commission found that:

> The Pullman Co. is hostile to the idea of conferring with organized labor in the settlement of differences arising between it and its employees (p. xxv).

Extracts from the findings and recommendations of the Commission follow:

> The company (the Pullman Co.) does not recognize that labor organizations have any place or necessity in Pullman, when the company fixes wages and rents, and refuses to treat with labor organizations. The laborer can work or quit in the terms offered, that is the limit of his rights. This position secures all the advantages of the concentration of capital, ability, power, and control for the company in its labor relations and deprives the employees of any such advantage or protection as a labor union might afford. In this respect the Pullman Co. is behind the age (p. xxvi).
>
> It is encouraging to find general concurrence, even among labor leaders, in condemning strikes, lockouts, and boycotts as barbarisms unfit for the intelligence of this age, and as economically considered, very injurious and destructive forces. Whether won or lost is broadly immaterial. They are war—internecine war—and call for progress to a higher plane of education and intelligence in adjusting the relations of capital and labor (p. xlvi).
>
> The rapid concentration of power and wealth, under stimulating legislative conditions, has greatly changed the business and industrial situation (p. xlvii).
>
> However men may differ about the propriety and legality of labor unions we must all recognize the fact that we have them with us to stay, to grow more numerous and powerful. Is it not wise to fully recognize them by law, to admit their necessity as labor guides and protections, to conserve their usefulness, increase their responsibility, and to prevent their follies and aggressions by conferring upon them the privilege enjoyed by companies, with like proper restrictions and regulations? The growth of corporate power and wealth has been the marvel of the past 50 years. It will not be surprising if the marvel of the next 50 years be the advancement of labor to a position of like power and responsibility. We have heretofore encouraged the one and comparatively neglected the other. Does not wisdom demand that each be encouraged to prosper legitimately and to grow into harmonious relations of equal standing and responsibility before the law? (p. xlviii).

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[1] Board's exhibit 9 (R. 30).

The Commission recommended the appointment of a permanent United States Strike Commission, which would have authority to mediate strikes on the railways. It concluded:

> The Commission urges employers to recognize labor organizations, that such organizations be dealt with through representatives; * * * It is also satisfied that if the employers will consider employees as thoroughly essential to industrial success as capital, and thus take labor into consulation at proper times, much of the severity of strikes can be tempered and the number be greatly reduced.

EXCERPTS FROM THE FINAL REPORT OF THE INDUSTRIAL COMMISSION OF 1898[2]

Under an act of 1898, a commission consisting of 19 persons—5 members of the Senate, appointed by the President of the Senate; 5 Members of the House, appointed by the Speaker; and 9 others "who shall fairly represent the different industries and employments, to be appointed by the President, by and with the advice and consent of the Senate", was provided for. The act in outlining the duties of the Commission stated, "it shall be the duty of the Commission to investigate questions pertaining to immigration, to labor, to agriculture, to manufacturing, and to business, and to report to Congress, and to suggest such legislation as it may deem best upon these subjects."

The Commission had the power to order the appearance of witnesses and the production of records. It employed 27 experts and examined 700 witnesses who appeared before it.

Extracts from Vol. XIX of its report follow:

JUSTIFICATION OF LABOR ORGANIZATION

It is quite generally recognized that the growth of great aggregations of capital under the control of single groups of men, which is so prominent a feature of the economic development of recent years, necessitates a corresponding aggregation of workingmen with unions, which may be able also to act as units. It is readily perceived that the position of a single workman face to face with one of our great modern combinations, such as the United States Steel Corporation, is in a position of very great weakness. A workman has one thing to sell—his labor. He has perhaps devoted years to the acquirement of a skill which gives his labor power a relatively high value, so long as he is able to put it in use in combination with certain materials and machinery. A single legal person has, to a very great extent, the control of such machinery and in particular of such materials. Under such conditions there is little competition for the workman's labor. Control of the means of production gives power to dictate to the workingmen upon what terms he shall make use of them (p. 800).

The tendency toward unified control of capital and business has only intensified without changing the disadvantages of the wage worker in his dealings with employers. Even when the number of employers is considerable, the number of workmen is far greater. The competition for work is normally far sharper than the competition for workmen.

The seller of labor is worse off in several respects than the seller of almost any physical product. His commodity is in the highest degree perishable. That which is not sold today disappears absolutely. Moreover, in the majority of cases the workman is dependent upon the sale of his labor for his support. If he refuses an offer, the next comer will probably accept it, and he is likely to be left destitute. * * *

Considered merely as a bargainer, as an actual participant in the operations of the market, the workingman is almost always under grave disadvantages as compared with the employer. Except the trifling higgling which he may do in the purchase of his small necessities, he is accustomed to bargain only

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[2] Board's exhibit 10 (R. 40).

in the sale of his labor, and the bargains which determine the sales are likely to be made at somewhat long intervals. Every employer, small or great, of necessity devotes a considerable share of his attention to bargains of purchase and of sale. If the labor bargain is made with a foreman, the foreman is continually engaged in such bargaining and develops in it a very special skill. * * *

But aside from all questions of mental dexterity and acquired skill, the workingman is at a disadvantage in that his economic weakness is well known to his employer. The art of bargaining consists in a great degree in concealing one's own best terms and learning one's opponents. The workman cannot conceal his need of work, and cannot know how much his employer needs him. He is relatively ignorant of the conditions of the market, both the market for labor and for the goods which his employer produces. It is the business of the employer to keep himself informed of the state of both markets. The employer is able to judge what he can afford to pay for a given quantity and kind of labor rather than do without it. Under such conditions the results of free competition is to throw the advantages of the bargain into the hands of the stronger bargainer (pp. 801–802).

ECONOMIC RESULTS OF LABOR ORGANIZATIONS

An overwhelming preponderance of testimony before the Industrial Commission indicates that the organization of labor has resulted in a marked improvement of the economic condition of the workers. * * * (p. 802).

The power of labor organizations to maintain wage rates, even in industrial depression, is repeatedly referred to in the testimony before the Commission, and it is regarded by several witnesses as an influence of great importance in moderating the severity of depression and diminishing its length. By keeping up wages the organizations are asserted to increase the purchasing power of the wage workers, and so to diminish the tendency to overproduction and underconsumption (p. 804).

DEMOCRACY IN INDUSTRY

As the units of industry have become large, the individual workman has been further and further removed from the control of his own daily life. He has found himself under the control of powers upon whose conduct he has been able to exercise no direct influence (p. 804).

By the organization of labor and by no other means, it is possible to introduce an element of democracy into the government of industry. By this means only, the workers can effectively take part in determining the conditions under which they work. This becomes true in the fullest and best sense only when employers frankly meet the representatives of the workmen and deal with them as parties equally interested in the conduct of affairs. It is only under such conditions that a real partnership of labor and capital exists. * * *

* * * If the working people are prevented from introducing an element of democracy into industrial life by way of labor organizations, they will undertake to introduce it in another way (p. 805).

Considering the governmental action to eliminate strikes and the causes of labor disputes, the Commission, after recommending the creation of State arbitration boards, also recommended the setting up of a national board of arbitration under an act of Congress. It states:

The suggestion has also been made that a national board of arbitration should be established by Congress. The present national arbitration law relates only to disputes affecting interstate carriers. Many labor disputes not connected with interstate commerce yet affect the welfare of more States than one. Such strikes as those of the coal miners in 1897 and 1900, or of the iron and steel workers in 1901, are of national importance. The fact that Federal courts are frequently invoked in regard to labor disputes seems to show a recognition of the wide-reaching significance which attaches to them.

A national board of conciliation and arbitration, composed of persons familiar with the conditions of labor and of industry, who should devote all their time to these duties alone, could supplement in many ways the work of State boards. It is believed by some that higher respect would attach to such a national board

than is accorded to State boards, and that its mediation would therefore be more likely to result in peaceful settlement. In many instances harmonious cooperation between the two sets of authorities would be entirely practicable. Such a national board could intervene in disputes which affect most broadly the general welfare.

To this line of argument it may perhaps be objected that conciliation and arbitration by governmental authorities have as yet in this country shown no very marked success; that a national board would be even more widely removed from the parties to disputes than the State boards; and that it is within the competence of the States to do all that is practicable in the way of public intervention in labor disputes.

Whatever force there may be in these objections as applied to past conditions, the progress of industry toward greater national development makes national legislation regarding labor disputes desirable (p. 855).

FINDINGS AND RECOMMENDATIONS OF THE UNITED STATES ANTHRACITE COAL STRIKE COMMISSION IN THE STRIKE OF 1902 [3]

President Theodore Roosevelt intervened in the 1902 coal strike, called conferences at the White House and induced both the operators and the union representatives to submit their grievances to arbitration before a commission to be appointed by him. The personnel of the commission, which included George Gray, as chairman, and Carroll D. Wright, Commissioner of Labor, as recorder, and five others, was designated to represent the general public as well as the operators and the workers, although neither the operators nor the workers as such had representatives of their own selection, or from their ranks. It is noteworthy that the report of the Commission was unanimous.

It examined 558 witnesses and made a comprehensive study of the entire situation and of the problems involved. In discussing the history and the causes of the coal strike of 1902 it approached the problem realistically, for it recognized a distinction between the occasion of the strike and its causes. It said:

> The occasion of the strike of 1902 was the demand of the United Mine Workers of America for an increase in wages, a decrease in time * * * the cause lies deeper than the occasion and is to be found in the desire for recognition by the operators of the miners' union (p. 31).

One hundred and forty-seven thousand miners were on strike from May 1 to October 23, 1902; the Commission estimated the losses from the strike as $25,000,000 in wages in addition to $1,800,000 furnished by the United Mine Workers as relief to the strikers; and $28,000,000 loss in freight receipts.

The strikers demanded (1) a 20-percent increase in wages, (2) a 20-percent reduction in hours, (3) a change in the manner of computing compensation for coal mined, and (4) an agreement between the United Mine Workers of America and the operators which would involve union recognition and result in the appointment of committees that would adjust new disputes as they arose.

The Commission granted the first two demands by awarding a 10-percent increase and ordering the working day reduced from 10 to 9 hours. The third demand was denied.

With respect to the question of recognition the Commission felt that under the terms of its appointment it had no jurisdiction to

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[3] Board's exhibit 11 (R. 45); the Commission's report is printed as S. Doc. 6, 58th Cong., spec. sess. 1903.

order the recognition of the union. It dealt with the problem, however, declaring:

> The Commission is led to the conviction that the question of the recognition of the union and of dealing with the mine workers through their union, was considered by both operators and miners to be one of the most important involved in the controversy which culminated in the strike.
>
> In the days when the employer had but few employees, personal acquaintance and direct contact of the employer and the employee resulted in mutual knowledge of the surrounding conditions and the desires of each. The development of the employers into large corporations has rendered such personal contact and acquaintance between the responsible employer and the individual employee no longer possible in the old sense. The tendency toward peace and good-fellowship which grows out of personal acquaintance or direct contact should not, however, be lost through this evolution to greater combinations. There seems to be no medium through which to preserve it so natural and efficient as that of an organization of employees governed by rules which represent the will of a properly constituted majority of its members, and officered by members selected for that purpose, and in whom authority to administer the rules and affairs of the union and its members is vested.
>
> The men employed in a certain line of work or branch of industry have similar feelings, aspirations, and convictions, the natural outgrowth of their common work and common trend or application of mind. The union, representing their community of interests, is the logical result of their community of thought. It encourages calm and intelligent consideration of matters of common interest. In the absence of a union, the extremist gets a ready hearing for incendiary appeals to prejudice or passion, when a grievance, real or fancied, of a general nature, presents itself for consideration.
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> The claim of the worker that he has the same right to join with his fellows in forming an organization, through which to be represented that the stockholder of the corporation has to join others in forming the corporation and to be represented by its directors and other officers seems to be thoroughly well founded, not only in ethics but under economic considerations. Some employers say to their employees: "We do not object to your joining the union, but we will not recognize your union nor deal with it as representing you." If the union is to be rendered impotent, and its usefulness is to be nullified by refusing to permit it to perform the functions for which it is created, and for which alone it exists, permission to join it may well be considered as a privilege of doubtful value.
>
> Trade-unionism is rapidly becoming a matter of business, and that employer who fails to give the same careful attention to the question of his relation to his labor or his employees, which he gives to the other factors which enter into the conduct of his business, makes a mistake, which sooner or later he will be obliged to correct. In this, as in other things, it is much better to start right than to make mistakes in starting, which necessitate returning to correct them. Experience shows that the more full the recognition given to a trades-union, the more businesslike and responsible it becomes. Through dealing with businessmen in business matters, its more intelligent, conservative, and responsible members come to the front and gain general control and direction of its affairs. If the energy of the employer is directed to discouragement and repression of the union, he need not be surprised if the more radically inclined members are the ones most frequently heard.
>
> The Commission agrees that a plan, under which all questions of difference between the employer and his employees, shall first be considered in conference between the employer or his official representative and a committee, chosen by his employees from their own ranks is most likely to produce satisfactory results and harmonious relations, and at such conference the employees should have the right to call to their assistance such representatives or agents as they may choose, and to have them recognized as such (pp. 61–62).

It ruled, moreover, that grievances which cannot be settled or adjusted by consultation with the superintendent of the mine or is of scope too large to be so settled, be referred to a permanent joint committee called board of conciliation to consist of six persons, three selected by workers' organizations and three by the operators (p. 67).

In considering a permanent solution to the problems discussed by it the Commission, 34 years ago (1902), dealt with the problem of Federal intervention in the settlement of labor disputes; after turning down suggestions concerning compulsory arbitration it recommended compulsory investigation of controversies both by State and Federal Government, declaring:

* * * The Federal Government can resort to some such measure when difficulties arise by reason of which the transportation of the United States mails, the operations, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States and with foreign nations, are interrupted or directly affected, or are threatened with being interrupted or affected.

The Federal Government has already recognized the propriety of action under the circumstances just cited, as evidenced in the act creating boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property or persons, and their employees, approved October 1, 1888. Under that act, when such controversies and differences arose, the President was authorized, on the application of either of the contestants, to appoint a commission of three members to investigate the causes surrounding the difficulty. That act was cumbersome in its provisions and was repealed by an act approved June 1, 1898, entitled "An act concerning carriers engaged in interstate commerce and their employees."

The provisions of the act first cited were applied at the time of the Chicago strike, so called, of 1894. There has been no resort to the act of June 1, 1898, which simply provides, so far as the Federal Government is concerned, that the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to a controversy coming under the terms of the act, with all practicable expedition put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to settle the same amicably; and that if such effort shall be unsuccessful, they shall at once endeavor to bring about an arbitration of the controversy in accordance with the provisions of the act. The duties of these officials then cease, except where there is no choice of a referee by the parties selected as arbitrators. Then the commissioners named have power to designate the third arbitrator. Thus the principle of Federal interference through investigation, has been established by these acts of Congress.

We print in the appendix a paper by Charles Francis Adams, read before the American Civic Federation in New York, December 8, 1902, in which he outlined a proposed act to provide for the investigation of controversies affecting interstate commerce, and for other purposes. This proposition is that the President, whenever within any State or States, Territory or Territories of the United States a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer and the employees or association or combination of employees of an employer, by which the free and regular movement of commerce among the several States and with foreign nations, is in his judgment interrupted or directly affected, shall in his discretion, inquire into the same and investigate the causes thereof, and to this end may appoint a special commission, not exceeding seven in number, of persons in his judgment specially qualified to conduct such an investigation. The proposed act consists of 11 sections, and makes provision for all methods of procedure, rules, etc., requisite for its being carried into effect (p. 85).

The paper which Charles Francis Adams referred to is set forth as appendix I to the report of the Commission at page 243 and was read by Mr. Adams before the American Civic Federation on December 8, 1902, recommending compulsory investigation. Mr. Adams recommended:

In the case of the National Executive, some question has been raised as to its functions and powers, in view of our constitutional system and the reserved rights of the States. I cannot, however, see that this enters into the present question, or what is now proposed. It is certainly the duty of the President to inform himself upon all questions relating to the carriage of the mails,

and to the movements of commerce, whether foreign or interstate. Questions of revenue are involved; questions affecting the transportation of material, men, and supplies may be involved. To inform himself he should be empowered to appoint agencies competent to investigate and report thereon. It is not now proposed to clothe him with any power in these exigencies, except that of receiving a report, forwarding it to the parties involved, together with his own recommendations, and then submitting the same to Congress. To give the President power to intervene by any executive act of a compulsory character would, in my opinion, jeopardize at the beginning every desirable ultimate result of the experiment proposed. Congressional action is always in reserve; but even congressional action ought to be intelligent; and, to be intelligent, it should be well considered—based on a considerable body of facts, judicially ascertained. The judicial ascertainment of facts and the study of principles involved therein, is, therefore, what the occasion immediately demands. Sound remedial legislation will in due time result therefrom. But at present the chances are enormous that crude and precipitate effort at a compulsory betterment of existing conditions would only make what is already quite sufficiently bad, distinctly worse.

The Federal act which Adams drafted provided in part:

AN ACT TO PROVIDE FOR THE INVESTIGATION OF CONTROVERSIES AFFECTING INTERSTATE COMMERCE AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That whenever within any State or States, Territory or Territories of the United States a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer being an individual, partnership, association, corporation, or other combination, and the employees or association or combination of employees of such employer, by reason of which controversy the transportation of the United States mails, the operations, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States and with foreign nations is in the judgment of the President interrupted or directly affected, or threatened with being so interrupted or directly affected, the President shall in his discretion inquire into the same and investigate the causes thereof.

SEC. 2. To this end the President may appoint a special Commission, not exceeding seven in number, of persons in his judgment specially qualified to conduct such an investigation.

SEC. 7. Having made such investigation and elicited such information of all the facts connected with the controversy into which they were appointed to inquire, the Commission shall formulate its report thereon, setting forth the causes of the same, locating so far as may be the responsibility therefor, and making such specific recommendations as shall in its judgment put an end to such controversy or disturbance and prevent a recurrence thereof, suggesting any legislation which the case may seem to require.

SUMMARY OF THE REPORT OF THE UNITED STATES COMMISSION ON INDUSTRIAL RELATIONS UPON THE COLORADO COAL STRIKE OF 1913 [4]

George P. West was assigned by the United States Commission on Industrial Relations to make a comprehensive study of the causes of the 1913 Colorado coal strike.

In his introduction to the report, Mr. West states:

To understand the Colorado situation in its relation to the general problem, it is necessary first to draw a rough line between the two principal classifications into which identical disturbances fall. On the one side are spontaneous revolts and the organized strikes of wage earners who are impelled to act by the pressure of economic necessity, or by the conviction that their collection power is sufficiently great to force an increase in wages or other purely mate-

[4] Board's exhibit 12 (R. 67).

rial advantage. On the other side of the line are those revolts that are animated primarily, not by the need or desire for higher wages and greater material blessings, but by resentment at the possession and the exercise by the employer of arbitrary power.

The strike involved:

* * * as its major issue the demand of the miners for a voice in determining the conditions under which they worked. * * *

In judging the merits of the miners' demand for collective bargaining, for that share in the management of the industry itself which is called industrial democracy, the Colorado strike must be considered as one manifestation of a world-wide movement of wage earners toward an extension of the principle of democracy in the workshop, the factory, and the mine * * * (p. 6).

By industrial liberty is here meant an organization of industry that will insure to the individual wage-earner protection against arbitrary power in the hands of the employer (p. 8).

In discussing the causes of the strike Mr. West lists summary discharge, the blacklist, and the use of armed guards and spies. He states that the major demand of the striking miners was recognition of the union, and places responsibility for the extension of the strike, and for the violence and bloodshed that followed, upon the operators for refusing to confer or meet with representatives of the union. He talks of the "unwillingness by operators to concede to employees right of effective organization, while themselves maintaining a complete combination and organization" (p. 33).

With respect to the matter of discharges, he says:

Not only could miners be discharged summarily for expressing union sympathies, but local superintendents were able to penalize miners at will by assigning them to places in the mines where the work was unusually difficult, dangerous, or unprofitable (p. 53).

Insofar as refusal of a conference by the operators is concerned Mr. West notes the fact that this strike was not called until a month after a request by the union for a conference with the operators and the refusal by the operators to go into the same room as the union representatives. The Rockefellers, who owned 40 percent of the stock of the Colorado Fuel & Iron Co., the largest single operator, refused to confer even with representatives of the Federal Government who attempted to conciliate and mediate the dispute. Mr. West found that "* * * in the light of Mr. Bowers' (a representative of the Colorado Fuel & Iron Co.) admission that a mere conference would have prevented the strike, the operators' refusal to grant such a conference must be regarded as making them responsible for all the disasters that followed" (p. 86).

West describes in detail the violence in the strike, particularly the "Ludlow massacre" in which 5 men and 11 boys were killed by bullet wounds, and 11 children and 2 women by suffocation as a result of the deliberate firing of the tent colony by the State militia. Federal troops were subsequently sent in by President, and peace was restored.

To Mr. West the "situation in Colorado approached a condition of absolute prostration of government and of actual revolution."

Mr. West places responsibility upon the employers and particularly upon John D. Rockefeller, Jr., for the length of the strike, 7 months, as well as the violence that took place. The strike involved 8,000 miners.

In considering the company union set up and sponsored by John D. Rockefeller, Jr., for the Colorado Fuel & Iron Co., Mr. West concluded that it embodied "none of the principles of effectual collective bargaining, and instead is a hypocritical pretense of granting what is in reality withheld" (p. 156).

EXCERPTS FROM THE FINAL REPORT OF THE UNITED STATES COMMISSION ON INDUSTRIAL RELATIONS, 1916 [5]

Congress by an act of August 23, 1912, created and defined the duties of the Commission on Industrial Relations. The act provided (sec. 4) that the Commission shall inquire as to the general condition of labor in the principal industries of the United States, including agriculture, especially in those that are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the growth of associations of employers and of wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into methods for avoiding or adjusting labor disputes through peaceful and conciliatory mediation and negotiations. The act further contained a special injunction upon the Commission that it shall "seek to discover the underlying causes of dissatisfaction in the industrial situation and report its conclusions thereon." Three members of the Commission represented employers, three employees, and three, including the chairman, the general public.

The chairman of the Commission was Frank F. Walsh. Its personnel included the following: John R. Commons, Wisconsin; Florence J. Harriman, New York; Richard W. Aishton, Illinois; Harris Weinstock, California; S. Thruston Ballard, Kentucky; John W. Lennon, Illinois; James O'Connell, District of Columbia; Austin B. Garretson, Iowa; Lewis K. Brown, secretary; William C. Thompson, counsel; Basil M. Manly, director of research and investigation.

The Commission held public hearings in the main cities of the country over a period of 154 days, or approximately 6 months; a total of 740 witnesses appeared and testified before it, of which 230 were affiliated with employers, 245 with labor, and 265 not affiliated with either group. While the members of the Commission were unable to join in a single report or agree on recommendations for action, with respect to the problem of collective bargaining there was substantially no difference of opinion.

The report of Basil M. Manley, director of research and investigation, was signed by Messrs. Walsh, Lennon, O'Connell, and Garretson. It listed four major causes of industrial unrest; among them was the denial of the right of organization. It considered the charge by the workers that in the "century-long struggle (for organization), almost insurmountable obstacles are placed in the way of their using the only means by which economical and political justice can be secured, namely, combined action through voluntary organization. The workers insist that this right of organization is fundamental

[5] Board's exhibit 13 (R. 74); the report was printed as S. Doc. 415, 64th Cong., reprinted by Government Printing Office, 1916; page references are to reprint.

and necessary for their freedom, and that it is inherent in the general rights guaranteed every citizen of a democracy." The Commission continued:

The demand for organization and collective action has been misunderstood, it is claimed, because of the belief among a large number of citizens that its purpose was simply to secure better wages and better physical conditions. It has been urged, however, by a large number of witnesses before the commission that this is a complete misconception of the purposes for which workers desire to form organizations. It has been pointed out with great force and logic that the struggle of labor for organization is not merely an attempt to secure an increased measure of the material comforts of life, but is a part of the age-long struggle for liberty; that this struggle is sharpened by the pinch of hunger and the exhaustion of body and mind by long hours of improper working conditions; but that even if men were well fed they would still struggle to be free. It is not denied that the exceptional individual can secure an economic sufficiency either by the sale of his unusual ability or talent or by sycophantic subservience to some person in authority, but it is insisted that no individual can achieve freedom by his own efforts. Similarly, while it is admitted that in some cases exceptional employers treat their employees with the greatest justice and liberality, it is held to be a social axiom that no group of workers can become free except by combined action, nor can the mass hope to achieve any material advance in their condition except by collective effort (p. 62).

It is also pointed out that the evolution of modern industry has greatly increased the necessity for organization on the part of wage earners. While it is not admitted that the employer who has only one employee is on an economic equality with the person who is employed by him, because of the fact that the employer controls the means of livelihood, which gives him an almost incalculable advantage in any bargain, nevertheless this condition of inequality is held to have been enormously increased by the development of corporations controlling the livelihood of hundreds of thousands of employees and by the growth of employers' associations whose members act as a unit in questions affecting their relations with employees.

There have been many able and convincing expositions of this belief by witnesses before the Commission, but there is no other which seems to have so completely covered the entire field as the testimony of Louis D. Brandeis, who, as he stated, has studied this problem from the standpoint both of employers and of employees (pp. 62–63).

The report quotes from the testimony of Louis D. Brandeis, now Justice Brandeis, a discussion of the economic power of a worker when dealing with organized employers particularly as represented by the large corporation.

* * * And the main objection, as I see it, to the large corporation is that it makes possible—and in many cases makes inevitable—the exercise of industrial absolution. It is not merely the case of the individual worker against employer, which, even if he is a reasonably sized employer, presents a serious situation calling for the interposition of a union to protect the individual. But we have the situation of an employer so potent, so well organized, with such concentrated forces and with such extraordinary powers of reserve and the ability to endure against strikes and other efforts of a union, that the relatively closely organized masses of even strong unions are unable to cope with the situation (p. 63).

* * * There must be a division not only of the profits, but a division of the responsibilities; and the men must have the opportunity of deciding, in part, what shall be their condition and how the business shall be run (p. 64).

* * * And it is in that, in my opinion, that we will find the very foundation of the unrest; and no matter what is done with the superstructure, no matter how it may be improved one way or the other, unless we reach that fundamental difficulty, the unrest will not only continue, but in my opinion will grow worse (p. 64).

The Commission continues:

It is very significant that out of 230 representatives of the interests of employers, chosen largely on the recommendations of their own organizations, less

than half a dozen have denied the propriety of collective action on the part of employees. A considerable number of these witnesses have, however, testified that they denied in practice what they admitted to be right in theory. * * * Both in theory and in practice, in the absence of legislative regulation, the working conditions are fixed by the employer.

It is evident, therefore, that there can be at best only a benevolent despotism where collective action on the part of the employees does not exist.

A great deal of testimony has been introduced to show the employers who refuse to deal collectively with their workmen do in fact grant audiences at which the grievances of their workmen may be presented. One is repelled rather than impressed by the insistence with which this idea has been presented. Every tyrant in history has on stated days granted audiences to which his faithful subjects might bring their complaints against his officers and agents. At these audiences, in theory at least, even the poorest widow might be heard by her sovereign in her search for justice. That justice was never secured under such conditions, except at the whim of the tyrant, is sure. It is equally sure that in industry justice can never be attained by such a method.

The last point which needs to be considered in this connection is the attitude frequently assumed by employers that they are perfectly willing to deal with their own employees collectively, but will resist to the end dealing with any national organization, and resent the intrusion of any persons acting for their employees who are not members of their own labor force. In practice these statements have been generally found to be specious. Such employers as a rule oppose any effective form of organization among their own employees as bitterly as they fight the national unions. The underlying motive of such statements seems to be that as long as organizations are unsupported from outside they are ineffective and capable of being crushed with ease and impunity by discharging the ringleaders. Similarly, the opposition to the representation of their employees by persons outside their labor force seems to arise wholly from the knowledge that as long as the workers' representatives are on the pay roll they can be controlled, or, if they prove intractable they can be effectually disposed of by summary dismissal.

To suggest that labor unions can be effective if organized on less than a national scale seems to ignore entirely the facts and trend of present-day American business. There is no line of organized industry in which individual establishments can act independently. Ignoring for the time the centralization of control and ownership, and also the almost universal existence of employers' associations, the mere fact of competition would render totally ineffective any organization of employees which was limited to a single establishment. Advances in labor conditions must proceed with a fair degree of uniformity throughout any line of industry. This does not indeed require that all employees in an industry must belong to a national organization, for experience has shown that wherever even a considerable part are union members, the advances which they secure are almost invariably granted by competitors, even if they do not employ union men, in order to prevent their own employees from organizing.

The conclusions upon this question, however, are not based upon theory, but upon a thorough investigation of typical situations in which the contrast between organization and the denial of the right of organization could best be studied. The Commission has held public hearings and has made thorough investigations in such industrial communities as Paterson, N. J., Los Angeles, Calif., Lead, S. Dak., and Colorado, where the right of collective action on the part of employees is denied. These investigations have shown that under the best possible conditions, and granting the most excellent motives on the part of employers, freedom does not exist either politically, industrially, or socially, and that the fiber of manhood will inevitably be destroyed by the continuance of the existing situation. Investigations have proved that although the physical and material conditions may be unusually good, as, for example, in Lead, S. Dak., they are the price paid for the absolute submission of the employees to the will of the employing corporation. Such conditions are, moreover, shown by the hearings of the Commission and by the investigations of its staff to be unusual.

The Commission has also, through public hearings and the investigations of its staff, made a thorough and searching investigation of the conditions in those industries and establishments where collective action, through the medium of trade-unions and joint agreements, exists. It has not been found that the

conditions in such industries are ideal, nor that friction between employers and the unions is unknown; nor has it been found that the employees in such industries have entirely achieved economic, political, and industrial freedom, for these ideals cannot be gained until the fundamental changes in our political and economic structure, which have already been referred to, have in some way been accomplished. It has been found, however, that the material conditions of the workers in such industries and establishments are on a generally higher plane than where workers are unorganized; that important improvements in such conditions have been achieved as the direct result of organization; and that the workers at least have secured a basis upon which their political and economic freedom may ultimately be established.

The fundamental question for the Nation to decide, for in the end public opinion will control here as elsewhere, is whether the workers shall have an effective means of adjusting their grievances, improving their condition, and securing their liberty, through negotiation with their employers, or whether they shall be driven by necessity and oppression to the extreme of revolt. Where men are well organized, and the power of employers and employees is fairly well balanced, agreements are nearly always reached by negotiations; but, even if this fails, the strikes or lockouts which follow are as a rule merely cessations of work until economic necessity forces the parties together again to adopt some form of compromise. With the unorganized there is no hope of achieving anything except by spontaneous revolt. Too often has it been found that during the delay of attempted negotiations the leaders are discharged and new men are found ready to take the place of those who protest against conditions. Without strike funds or other financial support the unorganized must achieve results at once; they cannot afford to wait for reason and compromise to come into play. Lacking strong leaders and definite organization, such revolts can only be expected to change to mob action on the slightest provocation.

Looking back over the industrial history of the last quarter century, the industrial disputes which have attracted the attention of the country and which have been accompanied by bloodshed and violence have been revolutions against industrial oppression, and not mere strikes for the improvement of working conditions. Such revolutions in fact were the railway strikes of the late eighties, the Homestead strike, the bituminous coal strike of 1897, the anthracite strikes of 1900 and 1903, the strike at McKees Rocks in 1909, the Bethlehem strike of 1910, the strikes in the textile mills at Lawrence, Paterson, and Little Falls, many of the strikes in the mining camps at Idaho and Colorado, the garment workers' strikes in New York and other cities, and the recent strikes in the mining districts of West Virginia, Westmoreland County, Pa., and Calumet, Mich.

As a result, therefore, not only of fundamental considerations but of practical investigations, it would appear that every means should be used to extend and strengthen organizations throughout the entire industrial field. Much attention has been devoted to the means by which this can best be accomplished, and a large number of suggestions have been received. As a result of careful consideration, it is suggested that the Commission recommend the following action.

1. Incorporation among the rights guaranteed by the Constitution of the unlimited right of individuals to form associations, not for the sake of profit but for the advancement of their individual and collective interests.

2. Enactment of statutes specifically protecting this right and prohibiting the discharge of any person because of his membership in a labor organization.

3. Enactment of a statute providing that action on the part of an association of individuals not organized for profit shall not be held to be unlawful where such action would not be unlawful in the case of an individual.

4. That the Federal Trade Commission be specifically empowered and directed by Congress, in determining unfair methods of competition to take into account and specially investigate the unfair treatment of labor in all respects, with particular reference to the following points.

(*a*) Refusal to permit employees to become members of labor organizations.

(*b*) Refusal to meet or confer with the authorized representatives of employees.

5. That the Department of Labor, through the Secretary of Labor or any other authorized official, be empowered and directed to present to the Federal Trade Commission, and to prosecute before that body all cases of unfair competition arising out of the treatment of labor which may come to its attention.

6. That such cases, affecting as they do the lives of citizens in the humblest circumstances, as well as the profits of competitors and the peace of the community, be directed by Congress to have precedence over all other cases before the Federal Trade Commission (pp. 64–68).

While the other members of the Commission differed as to recommendation for action, in their report prepared by John D. Commons, they agreed with the Walsh-Manly report in calling for Federal intervention in labor disputes, and recommended the appointment of a Federal industrial commission.

While there were other differences of opinion between the two groups as to the causes of industrial unrest the Commons group agreed with the Manly and Walsh committees in recognizing the seriousness of the struggle between capital and labor and the value of effective employee representation.

Thus the Commons group declared:

The contest between capital and labor is more serious than any of the other contests. Since the year 1877 it has frequently resulted practically in civil war, with the Army or militia called in to suppress one side or the other, according to the will of the Executive. It is claimed by some that this contest is irrepressible and will end in revolution, and at least it is plain, when the military power is called upon to decide a contest, that the ordinary machinery of Government, which is fairly successful in other contests, has broken down (p. 183).

and further:

It is apparent from all the preceding recommendations that the creation of industrial commissions with advisory councils, depends for its success on the permanency of organizations of employers and organizations of laborers. It is only as we have organizations that we can have real representation (p. 215).

EXCERPTS FROM THE REPORT OF THE INDUSTRIAL CONFERENCE CALLED BY PRESIDENT WILSON WITH PROPOSED PLAN FOR ADJUSTMENT OF DISPUTES[6]

On December 1, 1919, an industrial conference was convened by President Woodrow Wilson. The conference was called by the President to consider the causes of industrial unrest and to devise methods of solution. Its personnel consisted of the following:

William B. Wilson, chairman; Herbert Hoover, vice chairman; Martin H. Glynn, Thomas W. Gregory, Richard Hooker, Stanley King, Samuel W. McCall, Henry M. Robinson, Julius Rosenwald, George T. Slade, Oscar S. Straus, Henry C. Stuart, William O. Thompson, Frank W. Taussig, Henry J. Waters, George W. Wickersham, Owen D. Young, Willard E. Hotchkiss, Henry R. Seager, executive secretaries.

In its introduction to its report issued on March 6, 1920, it said:

The conference now proposes joint organization of management and employees as a means of preventing misunderstanding and of securing cooperative effort. * * * As modified the plan makes machinery available for collective bargaining, with only incidental and limited arbitration * * * (p. 5).

There is, however, a feature of the present industrial unrest which differentiates it from that commonly existing before the war. It cannot be denied that unrest today is characterized more than ever before by purposes and desires which go beyond the mere demand for higher wages and shorter hours. Aspirations inherent in this form of restlessness are to a greater extent psychological and intangible. They are not for that reason any less significant. They reveal a desire on the part of workers to exert a larger and more organic influence upon the processes of industrial life. This impulse is not to be discouraged but made helpful and cooperative. With comprehending and

[6] Board's exhibit 14 (R. 87).

sympathetic appreciation, it can be converted into a force working for a better spirit and understanding between capital and labor, and for more effective cooperation.

* * * * * * *

The guiding thought of the conference has been that the right relationship between employer and employee can be best promoted by the deliberate organization of that relationship. That organization should begin within the plant itself. Its object should be to organize unity of interest and thus to diminish the area of conflict, and supply by organized cooperation between employers and employees the advantages of that human relationship that existed between them when industries were smaller. Such organization should provide for the joint action of managers and employees in dealing with their common interests. It should emphasize the responsibility of managers to know men at least as intimately as they know materials, and the right and duty of employees to have a knowledge of the industry, its processes and policies. Emloyees need to understand their relation to the joint endeavor so that they may once more have a creative interest in their work (pp. 6–7).

The conference in its introduction to its report referred to a national and local system of settlement of industrial disputes describing the plan as follows:

The system of settlement consists of a plan, Nation-wide in scope, with a National Industrial Board, local regional conferences and boards of inquiry, as follows:

1. The parties to the dispute may voluntarily submit their differences for settlement to a board, known as a regional adjustment conference. This board consists of four representatives selected by the parties, and four others in their industry chosen by them and familiar with their problems. The board is presided over by a trained Government official, the regional chairman, who acts as a conciliator. If a unanimous agreement is reached, it results in a collective bargain having the same effect as if reached by joint organization in the shop.

2. If the regional conference fails to agree unanimously, the matter, with certain restrictions, goes, under the agreement of submission, to the National Industrial Board, unless the parties prefer the decision of an umpire selected by them.

3. The voluntary submission to a regional adjustment conference carries with it an agreement by both parties that there shall be no interference with production pending the processes of adjustment.

4. If the parties, or either of them, refuse voluntarily to submit the dispute to the processes of the plan of adjustment, a regional board of inquiry is formed by the regional chairman, of two employers and two employees from the industry, and not parties to the dispute. This board has the right, under proper safeguards, to subpena witnesses and records, and the duty to publish its findings as a guide to public opinion. Either of the parties at conflict may join the board of inquiry on giving an undertaking that, so far as its side is concerned, it will agree to submit its contention to a regional adjustment conference, and, if both join, a regional adjustment conference is automatically created.

5. The National Industrial Board in Washington has general oversight of the working of the plan.

6. The plan is applicable also to public utilities, but, in such cases, the Government agency, having power to regulate the service, has two representatives in the adjustment conference. Provision is made for prompt report of its findings to the rate-regulating body.

The conference makes no recommendation of a plan to cover steam railroads and other carriers for which legislation has recently been enacted by Congress.

7. The plan provides machinery for prompt and fair adjustment of wages and working conditions of Government employees. It is especially necessary for this class of employees, who should not be permitted to strike.

8. The plan involves no penalties other than those imposed by public opinion. It does not impose compulsory arbitration. It does not deny the right to strike. It does not submit to arbitration the policy of the "closed" or "open" shop.

The plan is national in scope and operation, yet it is decentralized. It is different from anything in operation elsewhere. It is based upon American

experience and is designed to meet American conditions. It employs no legal authority except the right of inquiry. Its basic idea is stimulation to settlement of differences by the parties in conflict, and the enlistment of public opinion toward enforcing that method of settlement (pp. 7–8).

In its discussion of "prevention of disputes" the conference recommended "joint organization through employee representation" as the major solution. It said:

* * * Employees need an established channel of expression and an opportunity for responsible consultation on matters which affect them in their relations with their employers and their work. * * * (p. 9).

* * * Representatives must be selected by the employees with absolute freedom. In order to prevent suspicion on any side, selection should be by secret ballot. There must be equal freedom of expression thereafter. All employees must feel absolutely convinced that the management will not discriminate against them in any way because of any activities in connection with shop committees * * * (p. 11).

In part III (p. 13) of its report the conference outlined its "plan for adjustment of disputes." Here is the plan, both to general description and its details (pp. 15–24):

DETAILS OF THE PLAN

1. National and Regional Boards

There shall be established a National Industrial Board, regional adjustment conferences and boards of inquiry.

2. National Industrial Board

The National Industrial Board shall have its headquarters in Washington, and shall be composed of nine members appointed by the President and confirmed by the Senate. In order to insure appointment upon such Board of persons familiar with industrial questions and capable of estimating the effect of the decisions rendered, three shall be chosen from persons representative of industrial employers, three from persons representative of industrial employees, and three from persons representative of general interests, who shall be specially qualified by reason of knowledge or experience with economic and general questions. All shall act for the general welfare and shall be selected without regard to political affiliations. One of the three persons representative of general interests shall be designated by the President as chairman.

The terms of office of members of the National Industrial Board shall be 6 years; at the outset three members, including one from each group, shall be appointed for a term of 2 years, three members for a term of 4 years, and three members for a term of 6 years; thereafter three members, one from each group, shall retire at the end of each period of 2 years. Members shall be eligible for reappointment.

The Board shall have general supervisory power over, and shall make rules governing the general administration of the plan. It may, in its discretion, require the regional chairman to take cognizance of a dispute and to institute the regional machinery to deal with the same; it may also suspend the operation of the regional machinery in case the regional chairman shall have set the same in motion under circumstances which the National Industrial Board disapproves. It shall act as a board of appeal on questions of wages, hours, and working conditions which cannot be adjusted by a regional adjustment conference, and in such cases it shall act by unanimous vote. It may act as a board of appeal on all other questions which may come before a regional adjustment conference, which may be voluntarily submitted to it by the parties to the dispute and which they have not been able to agree upon in the regional adjustment conference, except questions of policy such as the "closed" or "open" shop. In such cases, it shall act by such vote, unanimous or otherwise, as the submission shall specify. In case it is unable to reach a determination, it shall make and cause to be published, majority and minority reports. Such reports shall be matters of public record.

On all administrative questions, the Board may act by majority vote.

In order to facilitate its business, the Board may, in the less important cases, subdivide into parts of three, constituted of one member from each group.

In the event that the facts transmitted to it by the chairman of the regional adjustment conference are, in the opinion of the Board, inadequate to enable it to make a decision, the Board shall send the case back to the regional chairman with instructions to secure such further facts as may be needed. If the representatives of the parties to the dispute are in agreement upon the facts required, the chairman shall then secure and communicate to the National Industrial Board such facts; or (in case of their failure to agree), he shall reconvene the regional adjustment conference for the purpose of making a supplementary report concerning the needed facts. The National Industrial Board shall have no right of inquiry and no power to subpena. When the Board finds it necessary to call for additional facts, as just indicated, the time for the decision of the case by the Board may be extended, if necessary, for the purpose of obtaining the requisite facts.

3. Regional Chairmen and Vice Chairmen

In each region the President shall appoint a regional chairman. He shall be a representative of the public interest, shall be appointed for a term of 3 years and be eligible for reappointment.

Whenever in any industrial region, because of the multiplicity of disputes, prompt action is impossible, or where the situation makes it desirable, the National Industrial Board may, in its discretion, choose one or more vice chairmen and provide for the establishment under their chairmanship of additional regional conferences or boards of inquiry. The terms of office of such vice chairmen shall be limited to the consideration of the specified cases for which they are appointed.

4. Panels of Employers and Employees for Regional Boards

Panels of employers and employees for each region shall be prepared by the Secretary of Commerce and the Secretary of Labor, respectively, after conference with the employers and employees, respectively, of the regions. The panels shall be approved by the President.

At least 30 days before their submission to the President, provisional lists for the panels in each region shall be published in such region.

The panels of employers shall be classified by industries; the panels of employees shall be classified by industries and subclassified by crafts. The names of employers and employees selected shall be at first entered on their respective panels in an order determined by lot.

The selection from the panels for service upon the regional boards shall be made in rotation by the regional chairman; after service the name of the one so chosen shall be transferred to the foot of his panel.

The regional panels shall be revised annually by the Secretaries of Commerce and of Labor, respectively, in conference with the employers and employees, respectively, of each region.

5. Detailed Procedure of Regional Adjustment Conference

COGNIZANCE OF DISPUTES

The regional chairman shall not take cognizance of a dispute unless he is satisfied that it cannot be settled by agreement of the parties, or by existing machinery. If request be made by a party to a dispute that cognizance be taken of it, the regional chairman shall require the presentation of satisfactory evidence that an attempt has been made in good faith to settle the dispute by agreement of the parties, or by existing machinery, before requesting the other side to submit the dispute to a regional adjustment conference.

SUBMISSION

When the chairman shall have decided to take cognizance of the dispute, he shall request each party to it to select two representatives within such time (not less than 2 nor more than 7 days), as may be fixed by the chairman.

The appointment of representatives by both sides shall constitute an agreement that the parties will endeavor in good faith to adjust the dispute as members of

the regional adjustment conference, and that in case of failure of the conference to agree unanimously, they will accept the award of the National Industrial Board, or of an umpire selected by them, on any question relating to wages, hours, and working conditions, as herein provided. It shall also constitute an agreement by both sides that they will continue, or reestablish and continue, until the case is concluded, the status that existed at the time the dispute arose.

SELECTION OF REPRESENTATIVES

The selection of representatives of parties to the dispute shall be made in accordance with rules laid down by the National Industrial Board for the purpose of insuring free, prompt, and unrestricted choice of such representatives.

In case either side shall object to the representatives of the other, on the ground that they are not in fact representative, the chairman shall pass upon such objection, or he may call in some competent person to do so. If the chairman is in doubt as to whether the representatives objected to are in fact representative, he shall require that formal action be taken by the employer to select, and properly certify to the selection of his representatives, and likewise, unless otherwise provided by the National Industrial Board, he shall require the employees to elect their representatives by secret ballot, under the direction of some impartial person, designated by the chairman.

SELECTION FROM THE PANELS

When both sides shall have selected their representatives, the chairman shall take from the top of the panels for the industry concerned, or in the case of employees, for the craft or crafts concerned, 12 names of employers and employees, respectively. The representatives of the two sides shall choose 2 each from the 12 names on their respective panels.

FORMATION OF REGIONAL ADJUSTMENT CONFERENCE

The chairman shall forthwith convene a regional adjustment conference composed of the four representatives of the parties to the dispute, the four persons selected from the panels and the chairman, and so constituted, the conference shall proceed at once to negotiate an adjustment of the dispute.

ASCERTAINMENT OF FACTS

The regional adjustment conference shall not have the right of inquiry, or the power to subpena, but shall obtain its facts through the voluntary action of the parties to the dispute.

If no agreement is reached by the conference, and in the opinion of the chairman additional information is required to make a report to the National Industrial Board or to an umpire, the regional adjustment conference shall, at that time and for that purpose, have all the powers of inquiry and right to subpena which are vested in the Regional Board of Inquiry. Such right shall continue for the purpose of ascertaining any further material facts which the National Industrial Board or the umpire may require.

6. Powers and Duties of Regional Board of Inquiry

ORGANIZATION OF REGIONAL BOARD OF INQUIRY

If both parties to the dispute, or either party, refuse to submit it to a regional adjustment conference, the chairman shall organize forthwith a regional board of inquiry, as hereinbefore described, (*cf. supra*, p. 14, sec. 2).

RIGHT TO SUBPENA AND EXAMINATION

The Regional Board of Inquiry shall have the right to subpena witnesses, to examine them under oath, and to require the production of books and papers, in order to enable the board to ascertain all facts material to the dispute and a clear understanding of the issues involved.

REPORTS

The report or reports of a board of inquiry shall, in addition to being made public by the chairman, be transmitted to the Secretaries of Commerce and

Labor respectively, and shall be filed with the National Industrial Board, and with the chairman of each and every region, where they shall be matters of public record.

RIGHT OF THE CHAIRMAN TO VOTE

The chairman shall have the right to vote on all matters coming before the board of inquiry and he may in his discretion join in any report or reports of the board.

7. Transformation of the Regional Boards of Inquiry Into Regional Adjustment Conferences

At any time during the progress of the inquiry if both sides shall have selected representatives, and agreed to submit the dispute for adjustment, the board of inquiry shall become a regional adjustment conference by the admission to membership on the board of such representatives. The side or sides which appoint representatives, after the date fixed in the original request of the chairman, shall (because of its delay), accept the members of the board of inquiry as members of the regional adjustment conference.

The regional adjustment conference, so constituted, shall proceed to the settlement of the dispute as though it had been organized within the period originally fixed by the chairman.

8. Umpire

When a regional adjustment conference is unable to reach a unanimous agreement, the representatives of the parties to the dispute may select an umpire, and refer the dispute to him with the provision that his determination shall be final, and shall have the same force and effect as a unanimous agreement of such regional adjustment conference. All questions, even those including the "open" and "closed" shop, may be referred by the parties to an umpire.

9. Combination of Regions

Whenever the questions involved in a dispute extend beyond the boundaries of a single region, the regions to which the dispute extends shall, for the purpose of such dispute, be combined by order of the National Industrial Board, which shall designate the chairman of one of the regions concerned, to act as chairman of the adjustment conference, or board of inquiry, to be created in connection with the dispute in question.

Two employer members and two employee members shall be chosen from the combined panels of the regions involved in the dispute, under rules and regulations to be established by the National Industrial Board. The members representing the two sides to the dispute, and the members from the panels, shall be chosen in the same manner as in the case of a dispute in a single region. The National Industrial Board shall prescribe rules and regulations for the combination of the panels, and the effective adaptation of the other machinery created for use in the combined regions.

A regional board of inquiry constituted for a dispute extending beyond the boundaries of a single region shall have the same rights and powers as those conferred upon a regional board of inquiry for a single region.

10. Time of Reporting Findings

Any regional board of inquiry shall make and publish its report within 5 days after the close of its hearing, and within not more than 30 days from the date of issue of the original request by the chairman to the two sides to the dispute to appoint representatives.

Any regional adjustment conference shall make the determination of any question in dispute, or if unable to make a determination, shall make its report to the National Industrial Board, or to an umpire, if one shall have been selected, within 5 days after the close of its hearing, and within not more than 30 days from the time of the appointment of the representatives of the parties to the dispute. If the failure to make a determination relates to matters not appealable to the National Industrial Board, and in case no umpire has been selected, the regional adjustment conference shall, within the 30 days above specified, make and publish its report or reports. The periods above specified

may be extended by unanimous agreement of the conference, or by the National Industrial Board.

The National Industrial Board, or any umpire, shall determine any pending question in dispute within 15 days after the report of the regional adjustment conference shall have been submitted.

11. Effect of Decision

Whenever an agreement is reached through a regional adjustment conference, or the National Industrial Board, or an umpire, it shall have the full force and effect of a trade agreement, which the parties to the dispute are bound to carry out.

12. Application of Awards

Any question arising as to the true meaning or application of any such agreement shall be determined by the representatives of the parties to the dispute on the regional adjustment conference before which the dispute was heard. In case of disagreement, such representatives shall, unless otherwise provided in the agreement, submit in writing the question to the chairman of such board, whose decision shall be final.

13. Procedure on Failure to Comply With an Award

Upon complaint that either party has failed to comply with an agreement, the chairman of the regional adjustment conference before which the dispute was heard, shall call in one employer and one employee member of such conference, not parties to the dispute, selected in the order of their position on the panel at the time such conference was created, and the board of three thus constituted shall, by majority vote, determine whether or not there has been a failure to comply with the agreement, and shall make its determination public.

14. Relation of Boards to Existing Machinery for Conciliation and Adjustment

The establishment of the National Industrial Board and the regional adjustment conference shall not affect existing machinery of conciliation, adjustment, and arbitration established by the Federal Government, by the governments of the several States and Territories or subdivisions thereof, or by mutual agreements of employers and employees.

Any industrial agreement made between employers and employees may, by consent of the parties, be filed with the National Industrial Board. Such filing shall constitute agreement by the parties that in the event of a dispute, they will maintain the status existing at the time the dispute originated until a final determination, and that any dispute not adjusted by means of the machinery provided by the agreement, shall pass on appeal to the National Industrial Board for determination, and that such determination shall be of the same questions and shall have the same force and effect as in the case of a dispute on appeal from a regional adjustment conference.

15. General Provisions

The President shall have the power of removal of all persons appointed by him under the provisions of the plan.

In the presentation of evidence to the board of inquiry, and in argument before the National Industrial Board or an umpire, each side shall have the right to present its position through representatives of its own choosing.

The Secretary of Commerce and the Secretary of Labor, in preparing and revising the regional panels of employers and employees, shall, from time to time, develop suitable systems to insure their selections being truly representative.

The National Industrial Board, the regional adjustment conferences, and the umpires shall, in each of their determinations, specify the minimum period during which such determination shall be effective and binding. In case of emergency, a regional adjustment conference or the National Industrial Board may, after hearing both sides, alter its determination by abridging or extending the period specified.

In case of vacancy in any office or position created under this plan, such vacancy shall be filled for the unexpired term, in the same manner as the

original selections were made, provided, however, that if the vacancy occurs in the position of representatives of parties to a dispute, such vacancy may be filled by joint agreement of the parties.

Whenever an agreement shall be reached through a regional adjustment conference, it shall be executed in four originals, two of which shall be given to the parties to the dispute, respectively; one shall be filed with the National Industrial Board and one shall be filed in the office of the chairman of the region in which the agreement was reached. The agreements filed with the National Industrial Board and with the chairman shall be public records.

The National Industrial Board shall from time to time make suitable rules and regulations for the purpose of carrying out this plan, including regulations for the privacy of any information disclosed by a party, which information, although necessary and proper for a decision of the matter in hand, may, by its public disclosure to the board, umpire, or conference, injure one or more of the parties.

The National Industrial Board shall also from time to time, as experience in the operation of the plan shows to be desirable, issue instructions to the regional chairmen concerning the character of disputes of which they should take cognizance, in order that the plan may best serve the public interest.

No agreement of any regional adjustment conference shall be effective for any purpose if the same be in violation of any law of the United States or of any State in which such agreement is to be applied.

The National Industrial Board may, whenever it deems it desirable, request one employer representative and one employee representative, members of the regional adjustment conference, not parties to the dispute, to assist it in arriving at a clear understanding of any technical questions involved in the dispute and in framing its report. Such representatives shall not participate in the decision of any question.

16. Basis of Decisions

Whenever a board of inquiry inquires into, or a regional adjustment conference adjusts, a dispute relating to wages, hours of labor, or working conditions, it must inquire into the conditions prevailing in the industry, and its findings or decision, as the case may be, must be such that the standards recommended or decided upon may with fairness be applied to the entire industry, making due allowance for modifications which should be made on account of the local conditions, including competitive relations and living conditions, at the particular plant or plants to which the report or award is to be applied.

17. Protection of Information

Any information obtained by any board, conference, or umpire in the course of any inquiry or hearing as to any individual business (whether carried on by a person, firm, or company) which is not available to the public, shall not be made public, except with the consent of the owner of such business, provided, however, that this shall not prevent such general statement as may be necessary to inform the public of the issues involved in the dispute.

No individual member of such boards or conferences, and no umpire or other person obtaining information in any manner through their proceedings, shall disclose, or in any way use such information except in connection with his official action to accomplish the purposes of the plan.

Suitable penalties should be provided for any violation of this provision.

PURPOSES AND REASONS FOR THE INVESTIGATION OF LABOR DISPUTES AUTHORIZED BY THE SENATE RESOLUTION OF AUGUST 7, 1882, AS DISCLOSED BY ITS LEGISLATIVE HISTORY[7]

On June 15, 1882, Senator Morgan, of Alabama, offered the following resolution:

Resolved, First. That a select committee of seven Senators be appointed by the Chair to take into consideration the subject of labor strikes in the United States, and to inquire into the causes thereof, and what measures can be properly provided to modify or remove such causes of disturbances, and to provide

[7] Board's exhibit 50 (R. 779).

against their continuance or recurrence (Cong. Rec. vol. 13, pt. 5, p. 4924, 47th Cong., 1st sess.).

The rest of the resolution deals with procedural matters.

On June 21, 1882, this resolution came up for consideration, but was referred to the Committee on Education and Labor after some debate.

Senator Morgan, author of the resolution, spoke briefly about its objectives on June 21. His first statement, to the effect that he thought it the duty of Congress to inquire into the causes of existing industrial unrest is as follows:

> For my part, I confess that I am ignorant of the cause of this great industrial agitation in the land, and I am apprehensive as to its results, and I think it is the duty of Congress, in the protection of all the industrial classes of this country, as well as in the protection of the capitalists, to look into this question through one of its select committees. It seems to me that we cannot safely avoid the performance of that duty at this time. I have a memorandum of some of the strikes that have occurred since the first day of March of the present year (p. 5161).

Morgan then listed a total of 11 strikes which had occurred in the short period which he mentioned, and then went on to state, in part:

> In all, Mr. President, the strikers have numbered over 100,000, and estimating that there are five persons dependent upon each of these strikers, each of them being the head of a family, we may suppose for their daily subsistence there would be 500,000 immediately and directly affected by these strikes; and when we come to consider the influence upon the other industries of the country, especially upon the agricultural, commercial, and transportation industries, the effect is simply enormous.
>
> There is one other feature that deserves great attention. More recently the strikers have confined themselves to what might be called legal operation; that is to say, they have not been so riotous as they were in former years, as they were in 1876 or 1877, as I remember. But the very steadiness of the movement, the very fact that the organization is in such control as that it can move steadily to its purpose controlling the great manufacturing and industrial interests of this country without resorting to a riot, proves that there is some deep-seated politico-economical question involved in this, which I do not understand, and which I think it is our duty to look into.
>
> We raise commissions for various purposes. I do not object to commissions to be raised by this body for the purpose of seeking information; but if there was ever an occasion when it became the duty of the members of the Senate to inform themselves closely and narrowly as to the causes of these industrial disturbances, it seems to me that now is the time. There have been 103 iron mills closed and 2,052 furnaces in the Ohio River district and west of it. Some of these organizations are very strong. The Amalgamated Association, as it is called, is upward of 80,000 strong, an organization as to the character of which I am unable to speak, because I cannot state the details of the organic system under which they are operating; but I observe lately that this organized strike on the part of what are called operatives and laborers has induced a corresponding organization on the part of capitalists, and that only increases the danger.
>
> The mill men in various parts of the United States are now in combination with each other to try to hold in check and to overpower by the mastering force of capital this revolt of the laborers against the prices which they are receiving, and against other conditions under which they are placed.
>
> We therefore find the organization complete, we may say on both sides, and not the politics only of this country, but every interest must necessarily be put to a severe test, a severe ordeal, unless this matter can be looked into and some legislative action taken either by Congress or by the States, wherever the jurisdiction may properly belong, to relieve against the causes which have led to this excitement and this disturbance (pp. 5161–5162.)

Senator George then expressed himself as in favor of the resolution, stating in part as follows:

> The relations between capital and labor are without doubt unsatisfactory. They present antagonism and distrust instead of harmonious cooperation and

mutual confidence. This should not be. Each is necessary to the profitable employment of the other. Capital would be utterly valueless if it could not purchase labor directly or its perfected results. Labor would find it impossible to subsist without at least some small capital of food and clothing essential for its consumption till its results shall be obtained. Yet as necessary as each is to the other, as I have said, they are not in proper mutual relations.

Labor complains that it is insufficiently rewarded; that the partnership is unequal in its benefits; that it barely maintains itself, while through its agency capital is being constantly augmented, whereby labor is made to forge the chains which bind it to an ever-increasing inequality in the association between them; that but a small share of its immense productions goes to those by whose intelligent work, wearisome, exhausting, and often dangerous toil and constant self-denial they were created. Labor also complains that it has not an equal chance in the struggles of life; that it has not a fair opportunity of winning comfort and independence, of educating its children, and securing to them an assured advantageous position in life.

On the other hand, capital complains that it is in danger from a leveling and communistic spirit, and that the demands and exactions of labor, if acceded to, would prevent its profitable employment. The recent strikes are the result of this antagonism, difference, and distrust.

I will not now go into an examination of the causes of these strikes, nor attempt to apportion the blame between the disagreeing parties, though I have strong convictions on this subject. The purpose of these resolutions is to examine into this and to ascertain and place before the Senate and the country the facts on which an intelligent and impartial judgment may be formed, so that we may not err in our future action on subjects pertaining to the relations between capital and labor (p. 5162).

Senator George ended up by remarking upon and expressing some fear for the future of small independents because of "the enormous growth of corporate power and corporate privileges * * * in the hands of a few fortunate and favorite persons."

The remainder of the debate on June 21 related mainly to the question whether the investigating committee should be a select committee or should be the Senate Committee on Education and Labor. However, in the course of that debate, Senator Hoar, in expressing himself in favor of the resolution, pointed out that for some years he had been advocating. the appointment of a special commission to investigate such disputes, and to exist as a permanent agency for the consideration and disposition of questions arising between capital and labor. The following are his remarks on that subject:

> Some years ago I introduced in the House of Representatives a bill for the appointment of a commission whose duty it should be to investigate this special class of questions; questions arising between labor and capital, that should be a permanent board, and to whose attention every complaint of labor, of the working of existing legislation, of the need of new legislation, might be brought, and who should have the duty of collecting all the statistical and scientific information which would tend to elevate the condition of the laboring persons in this country and their families.
>
> That proposition was received with very great approbation by all the great labor organizations in the country, organizations like the Iron Molders' Union, organizations of the other special classes of manufacturing laborers, that class of organization with whom are included what are called Communists. All concurred in saying that it would gratify them beyond measure if the Congress of the United States would consent to the simple request, so harmless, so just, so reasonable, of a provision for merely obtaining the facts, turning, by the power of the United States Government, the sunlight, the light of day upon the existing condition of things so far as they were interested.
>
> That proposition passed the House by a very large majority. It originally met some opposition from the Democratic side of the House; but, in justice to the Democratic side of the House I desire to say that the opposition which came from that side was merely the opposition which naturally starts up in a minority

to propositions from the majority before they are understood, and on discussion and explanation the whole opposition there vanished. The bill was discussed in the Senate. It was advocated by the late Vice President Wilson, himself a laboring man, and by a great many other gentlemen in the Senate; but it was attacked with great bitterness, attacked, I believe, with a great deal of ignorance of the true purpose and object and scope of the measure, and it failed by a small majority. It has been brought up more than once since, but never has succeeded in obtaining the assent of the Senate.

Now, I should be glad to have this proposition of the Senator from Alabama go further and contemplate the perpetual and permanent existence of a board who shall obtain and record the statistical information bearing upon the great subject which he has discussed; but if that cannot be obtained, I, for one, am ready to concur with the Senator from Alabama in his proposition that a committee of the Senate, if one can be found who will undertake the duty, shall undertake it (p. 5163).

Senator Davis, of West Virginia, stated that he thought the resolution brought up "one of the most important subjects that Congress can handle for information only", but he doubted "very much whether the remedy is through Congress."

This was the only opinion expressed in the debate that Federal legislation would be improper. And, of course, the statement which he made was by no means decisive. As the other quotations above show, the Senators were uncertain both as to the causes of strikes and of possible remedies. The resolution represented, so far as the debates on that day go, a desire on the part of the Senate to relieve its uncertainty on both those points.

On June 28, 1882, the Senate Committee on Education and Labor reported the Morgan resolution with amendments. The resolution as reported is as follows:

Resolved, that the Committee on Education and Labor is hereby authorized and directed to take into consideration the subject of the relations between labor and capital, the wages and hours of labor, the condition of the laboring classes in the United States, and their relative condition and wages as compared with similar classes abroad; also the subject of labor strikes and to inquire into the causes thereof and the agencies producing the same, and to report what legislation should be adopted to modify or remove such causes and to provide against their continuance of recurrence, as well as any other legislation calculated to promote harmonious relations between capitalists and laborers and the interests of both by the improvement of the condition of the industrial classes of the United States.

The resolution was adopted by the Senate on August 7, 1882, as reported by the Committee on Education and Labor with the addition of the following clause enlarging the scope of the investigation:

and to inquire into the division between labor and capital of their joint productions in the United States.

This amendment was inserted after the word "abroad" at the end of the first clause of the resolution as reported on June 28.

The authority of the Senate Committee was extended in successive Congresses up to and including the Second Session of the Forty-ninth Congress (February 1887).

While the committee obtained authority to print the testimony and its final report, the Library of Congress Index of Congressional Documents states that the fifth volume, which was to contain the concluding testimony and the final report of the committee, was never issued. The Congressional Record does not reveal why that was the case. In July 1886 Senator Blair, who was chairman of the Senate Committee on Education and Labor, stated that he wanted

the authority of the Commission extended at that time because only a single volume remained to be prepared. Apparently, that was still the situation in February 1887 when the committee's authority was last extended.

In connection with this resolution, I should point out that the index to the Congressional Record for the Forty-eighth, Forty-ninth, and Fiftieth Congresses appears to indicate a steadily increasing number of legislative proposals with respect to labor disputes. There were a number for investigation purposes and others with more specific objectives, such as workmen's compensation and proposals with respect to wages and hours. It seems to me that, if the matter were to be thoroughly studied, the Congressional Record did not show that there was almost constant agitation in Congress for many years during this period to the end of setting up some sort of Federal machinery for the disposition of labor disputes.

PURPOSES AND REASONS FOR INVESTIGATIONS OF INDUSTRIAL COMMISSIONS OF 1898 AND 1912 AS DISCLOSED BY THE LEGISLATIVE HISTORY OF THE ACTS OF CONGRESS AUTHORIZING THEM[8]

INDUSTRIAL COMMISSION OF 1898

The law enacted by Congress (Public, No. 146, Acts of 1898, approved June 18, 1898) creating the Industrial Commission of 1898 was passed in the Fifty-fifth Congress, second session, and in outlining the scope of the investigation provides as follows:

"SEC. 2 That it shall be the duty of this commission to investigate questions pertaining to immigration, to labor, to agriculture, to manufacturing, and to business, and to report to Congress and to suggest such legislation as it may deem best upon these subjects.

"SEC. 3. That it shall furnish such information and suggest such laws as may be made a basis for uniform legislation by the various States of the Union, in order to harmonize conflicting interests and to be equitable to the laborer, the employer, the producer, and the consumer."

Public, No. 146 was immediately preceded by a number of proposals in the Fifty-third and Fifty-fourth Congresses, which in substance were the same as the bill which became Public, No. 146. Hence, the legislative history of the statute must start from the earlier bills.

1. H. R. 7756. This bill was introduced in the Fifty-third Congress, second session, by Representative Phillips of Pennsylvania, chairman of the House Committee on Labor, on July 18, 1894. This bill, like all the others subsequently introduced, provided for "the appointment of a nonpartisan commission to collate information and to consider and recommend legislation to meet the problems presented by labor, agriculture, and capital."

H. R. 8494, covering the same subject matter and introduced in the third session of the Fifty-third Congress by Phillips, was a substitute for H. R. 7756 in the third session.

2. H. R. 8494. This bill was introduced by Phillips on January 15, 1895, in the Fifty-third Congress, third session, with the same title

[8] Board's exhibit 51 (R. 780).

and substantive provisions as H. R. 7556. H. R. 8494 proposed the appointment by the President of a commission composed of five men representative of labor, five of agriculture, and five of business, each such group of five to appoint two additional commissioners, making a total of 21. As to the functions of the commission, H. R. 8494 provided in sections 5 and 6 as follows:

Sec. 5. That it shall be the duty of this Commission to investigate questions pertaining to immigration, to labor, to agriculture, and to business, and recommend to Congress such legislation as it may deem best upon these subjects.

Sec. 6. That it shall furnish such information and suggest such laws as may be made a basis for uniform legislation by the various States of the Union in order to harmonize conflicting interests, and to be equitable to the laborer, employer, the producer, and the commission.

H. R. 8494 was reported out by the House Committee on Labor on January 22, 1895, under House Report No. 1640.

Report No. 1640 states that H. R. 8494 is an amended bill or substitute for H. R. 7756 and states at the outset that the committee reports the bill favorably:

Because there is widespread dissatisfaction with the laws governing labor, as shown by discontent, strikes, and violence, causing great misery, loss, and danger to society.

Because of the growing discontent among farmers, as evidenced by their various organizations, their protests against unequal burdens and taxation, discriminating charges in transportation, and exorbitant charges by middlemen in disposing of their commodities.

Because the businessmen need and business interests require a just and more satisfactory settlement of differences with those with whom they deal, and upon whose labor and products successful business must depend.

* * * * * * *

Because our laws have not kept abreast with the rapid pace of development. New conditions confront us on every hand in the massing of labor and capital, in new improvements in the instruments of husbandry (making great changes in argicultural pursuits), in the mode of manufacturing, transportation, travel, and intercommunication.

All have been revolutionized within a generation.

We have been offering premiums for inventions, discovery, and development. We have had 10,000 men burning midnight oil in inventing labor-saving machines and devices of all kinds until we have changed the whole order of industrial pursuits, but we have offered no premium for talent or energy in ameliorating the altered conditions of labor, established no commission to bring up our laws to meet these new conditions; hence there is friction, discontent, and violence, destroying peace, property, and life.

On page 2 of the report the committee states that "the good of society demands the investigation because so much of vital importance to its well-being and peace is bound up in massed capital and massed labor, so frequently in conflict, and which now largely control production, manufactures, transportation * * * upon which the good order of society depends."

H. R. 8494 was debated on February 26, 1895, and then under the pressure of time was withdrawn by one of its sponsors. There is no further reference in the Congressional Record to H. R. 8494.

3. H. R. 21. This bill was introduced by Phillips on December 3, 1895, in the first session of the Fifty-fourth Congress. It has the same title in the Congressional Record as H. R. 8494 of the preceding Congress. H. R. 21 gave way to H. R. 6119, introduced by Phillips in February 1896, in the same session.

4. S. 293. This bill was introduced by Senator Perkins, chairman of the Committee on Education and Labor, on December 4, 1895. It

has the same title as H. R. 21 and presumably was a companion bill. S. 293 was reported out by the committee on March 26, 1896, with Senate Report No. 575 of that date.

As to the reasons for investigation of labor problems, the report first remarks upon the need for some central commission to view the complicated problems of the industrial age, and the futility of attempting to deal with such large questions by local boards or legislation. On this point the report states as follows:

> The problems presented in the various fields of labor and in the different departments of business have become and are becoming more complicated through the progress which marks this industrial age. The relations of laborers to each other on the one hand, and to capital on the other, are now so varied and differ so greatly in widely separated sections of our great country that it has become necessary to establish some central bureau or commission which shall be able to view comprehensively the entire field, and ascertain the true relations to each other of the facts presented. In no other way can the many interests of half a continent be brought into harmony; in no other way can that feeling of good will of all classes toward each other be aroused which is essential to the happiness, prosperity, and progress of the Nation.
>
> To attempt to deal with the larger questions presented by capital and labor through local boards or by local legislation has become impracticable. The facilities for communication have become so many and so efficient that all parts of our country and all its interests are inseparably knit together. Yet, at the same time the differences in conditions surrounding labor and capital in widely separated localities render it impossible to deal with all according to rules or principles formulated or derived from a study of the problems presented in a circumscribed area. The time has come for a wider study of these problems, and to wider generalizations. The questions presented by the industrial and business conditions of Maine must be considered in connection with those of the far different conditions of California and Alabama, the mutual relations of the three sections ascertained, and labor and capital in each brought into accord with each other both locally and generally. The interdependence of all industrial pursuits and all business vocations throughout the country must be ascertained in order that the true causes of friction may be discovered and remedies applied which shall not bear unjustly upon any one calling in which men engage.
>
> It is owing to the present impossibility of ascertaining the true and fundamental relation of labor and capital, of labor in one section with labor in another, of capital in one region with capital in another, that the discontent of the one and the apparent indifference of the other are constantly increasing.

At pages 2 to 4 the report points to a number of political proposals being advanced by labor organizations out of the belief that they must resort to politics rather than harmonious relations in order to accomplish their sought benefits, and at the bottom of page 3 of the report the Committee states that this extension of the aims of labor organizations is due to the failure to establish general principles regarding the relations of labor and capital.

The report also quotes statistics from the Department of Labor with respect to the economic losses due to labor disputes, as follows:

> The figures presented by the Department of Labor indicate how great is the prevalence of disputes between employers and employees. From 1881 to and including the first 6 months of 1894 there were 14,390 strikes, involving 69,167 establishments and 3,714,406 employees. There were in the same period lockouts in 6,067 establishments, throwing out of employment 366,690 workmen. The money loss of the strikes was $163,807,866 in wages, $10,914,406 in assistance by labor organizations, and $82,590,366 loss to employers. In lockouts the loss in wages was $26,685,516; in assistance, $2,524,298; and to employers, $12,235,451. Of all those who struck only 1,188,575 were successful in attaining their objects.

Immediately succeeding these statistics, the report refers to a list of about 30 causes of the strikes referred to, including union recognition and related matters.

S. 293 was indefinitely postponed on June 3, 1896, by Perkins, who, in behalf of the Senate Committee on Education and Labor, reported out H. R. 9188 (referred to hereinafter) as a substitute.

5. H. R. 6119. This bill was introduced by Representative Phillips on February 14, 1896, in the first session of the Fifty-fourth Congress, and bears the same title as all the preceding bills. It was reported out on February 15, 1896, by Phillips from the House Committee on Labor under Report No. 387. This report states that H. R. 6119 is the amended bill or substitute for H. R. 21, and that the Committee reports favorably on the bill. The first three reasons stated in Report No. 387 by the Committee for reporting the bill favorably are the same as those quoted above from House Report No. 1640 on H. R. 8494. What Report No. 387 adds to Report No. 1640 is a more direct statement of the effect of strikes and lockouts and the need of dealing with them. On this the report states as follows:

> That our relations are most intimately bound up with the wage earner is shown by the many strikes and lockouts in recent years, which have entailed great suffering and loss of property, as well as the sacrifice of life. Upon this subject of strikes we desire to state that the Honorable Carroll D. Wright, Commissioner of Labor, in his third annual report submitted the results of an extensive investigation as to strikes and lockouts in the United States from 1880 to 1886. It will be seen by an examination of this summary that during the years named (1881 to 1886, both inclusive) there were 3,902 strikes in the United States.
>
> There were 22,304 establishments and more than 1,323,203 employees involved.

The report then refers to Wright's estimate of $98,000,000 as total loss of strikes and lockouts in the 6-year period covered by Wright and goes on to state:

> These figures represent the actual loss to the parties engaged and do not represent the enormous loss which incidentally came to the community by reason of such disturbances.
>
> The facts and figures of the last few years in regard to strikes and lockouts are not fully accessible. They are recent history and are still more appalling than those given. One writer has estimated the loss caused by strikes in 1894 at $80,000,000. Others estimate it as high as $100,000,000.

The report, on page 3, states the need for a just and more satisfactory settlement of differences between business and labor, and reiterates the matter contained in Report No. 1640 to the effect that the proposed commission was the most effective method of obtaining the necessary information to deal with these pressing problems. Except for the reference to the statistics which Commissioner Wright had published subsequent to H. Rept. 1640, H. Rept. 387 is substantially the same as H. Rept. 1640.

H. R. 6119 was given a privileged status on May 20, 1896, and debated on May 21. Representative Phillips, sponsor of the bill, made a speech which is substantially the same in substance as H. Rept. 387 and H. Rept. 1640 (Cong. Rec., vol. 28, pt. 6, pp. 5527–5530). He remarked (p. 5529) that "this age is one of concentration, corporation, and centralization" and "if organized capital deals with labor it must expect to deal with organized labor." At the same page he

also said, after remarking about the conflict of interest between businessmen and labor, that "the great industrial problem may shortly be met by violence if not worked out in peace by law."

Phillips also referred to statistics furnished by Commissioner Wright showing the number of strikes, workers involved, and estimated total financial loss over the period from 1881 to 1894.

It is apparent from Phillips' speech that sponsors of the bill were vague on the question of whether the legislation to be recommended would look toward national or State regulation; H. R. 8494 embraced the possibility of either State or national legislation. Of course, these legislative proposals were very general in their wording and investigation contemplated by them could therefore have been very broad in scope. The speech by Phillips was likewise vague. Thus Phillips referred to the depression in the agricultural industry. However, when he came to discussing business, which also was to be investigated with the view toward remedying its ills, the only specific loss he ever referred to was that due to strikes, which, in the 13½-year period to which he referred, Commissioner Wright had estimated at $298,000,000.

While H. R. 6119, and Phillips' debate, outlined the scope of the investigation in very broad terms, the specific reference to labor problems shows that they were the particular inspiration for the proposed investigation.

One other speech of importance on H. R. 6119 was delivered by Representative Low, who was considerably more specific in his conception that the bill was designed to deal with labor disputes than was Representative Phillips. His entire speech (pp. 5533–5537) is to the effect that labor disputes have given rise to great financial loss as well as violence and bloodshed; that such disputes ought to be adjusted amicably; and that the subject was a deep one for legislation, requiring the attention of a body such as that suggested in H. R. 6119.

On June 10, 1896, H. R. 6119 was laid on the table for the reason that a Senate bill covering the same subject matter had passed the House (the bill which passed the House was H. R. 9118, which, as will be indicated below, was introduced by Phillips on May 23, as a substitute for H. R. 6119, and therefore a House bill and not a Senate bill).

6. H. R. 9118. This bill was introduced by Phillips as a substitute for H. R. 6119 on May 23, 1896. It was reported out by the Committee on Labor on May 26, 1896, by House Report No. 1999. That report states that H. R. 9118 is "the amended or substitute bill for House Bill 6119"; that the committee reports in favor of its passage, and directs the attention of the House to Report No. 387, accompanying H. R. 6119. H. R. 9118 was adopted under suspension of the rules and passed by the House on June 1, 1896. The bill is set out in full at page 5960 in the Congressional Record of that date (Cong. Rec., vol. 28, pt. 6) and in its two sections with respect to the duties of the Commission is substantially identical with the provisions of H. R. 8494 quoted hereinabove.

Representative Henderson, in opening his remarks, stated (p. 5962): "Mr. Speaker, this is what is known as the 'Labor bill' reported from the Committee on Labor;" Henderson went on to refer

to the Report of the Committee on the Causes of Strikes, and the need for getting adequate facts with respect to labor problems. Representative Howe stated for the bill (p. 5964) that "it has for its object the bringing about of a better understanding of capital and labor, and therefore I am in favor of its passage." The whole debate covers only three and one-half pages of the Congressional Record.

H. R. 9118 was reported out by the Senate Committee on Education and Labor on June 3, 1896, and was substituted on the Senate Calendar for S. 293, referred to hereinabove. However, H. R. 9118 was not debated in the Senate until the second session of the Fifty-fourth Congress, Congress having adjourned on June 11, 1896.

The Senate debated briefly H. R. 9118 on February 20, 1897, but without any speech bearing directly on the purpose of the bill. H. R. 9118 came up again on March 3, 1897. At the outset of the debate on that date, the bill was amended in two important respects. First, it was amended so as to provide for a commission to be composed of five members of the Senate, five members of the House, and nine other persons to represent the different industries and employments to be appointed by the President. In its substantive amendment it was proposed to eliminate the section making it a duty of the Commission to suggest uniform legislation for the various States. As amended in the Senate on March 3, 1897, the only section dealing with the duties of the Commission was section 2 which reads as follows:

> Sec. 2. That it shall be the duty of this Commission to investigate questions pertaining to immigration, to labor, to agriculture, to manufacturing, and to business, and to report to Congress and to suggest such legislation as it may deem best upon the subjects.

In the debate in the Senate on March 3, 1897, Senator Perkins, Chairman of the Senate Committee on Education and Labor, referred to the high cost of strikes and stated that if the bill:

> * * * could be the means of preventing one strike, one conflict between labor and capital, it would be worth 10 times, aye, one hundred fold, more than the amount named in the bill.
>
> Mr. President, the great strike which commenced in July 1894, it is estimated cost this country $100,000,000, to say nothing of the lives lost, of the heartaches, of the bad feeling that existed and which was brought about as the result of that conflict.

The Senate amendments to H. R. 9118 were concurred in by the House on March 3, 1897. However, the bill was not signed by the President in view of the similar bills introduced thereafter in the Fifty-fifth Congress to which reference will be made below.

7. H. R. 4073. The report of the Committee on Labor on this bill (Rept. No. 353, 55th Cong., 2nd sess.) states that "a bill practically in the same form passed both houses of the last Congress." The report goes on to state that "there exists a general belief among all classes of citizens that the laws have not kept pace with industrial and business changes; that the laws which gave business and the industries, and the relations of those engaged in them, have not been brought up and adapted to the present status." As to labor the report states that "the protest of labor against existing conditions is manifested by its organized expression of discontent, and strikes which have led to loss, misery, and conflicts, if not social menace."

The report then goes on to refer to the estimates made by Commissioner of Labor Wright on strikes, mentioning specifically those occurring in the year 1894. The report ends up with a statement that there is great need to get at the relative facts underlying the antagonism between capital and labor.

H. R. 4073 was passed by the House on May 17, 1898, without edifying debate.

On May 23, 1898, Senator Perkins of the Senate Committee on Education and Labor, advised the Senate that he had been directed to report H. R. 4073 without amendments. At the same time he moved that S. 2253 (which is apparently a companion bill to H. R. 4073) be postponed indefinitely. Some days later the Senate passed H. R. 4073 without debate, and it was approved by the President on June 18, 1898 (Public, No. 146).

As approved, Public, No. 146 provided for a commission to be composed of five members of the Senate, five members of the House, and nine other persons "to represent the different industries and employment" to be appointed by the President. Its substantive provisions were quite the same as H. R. 8494 introduced by Representative Phillips in January 1895, in the third session of the Fifty-third Congress, that is, the commission was to suggest legislation to Congress, and also such laws as might be made a basis for uniform legislation by the various States.

8. S. 2253. This bill was introduced in the Senate in the fifty-fifth Congress and apparently was a companion bill to H. R. 4073. It was reported out by the Senate Committee on Education and Labor in July 1897 (S. Rept. No. 384). That report in general approach is quite similar to Senate Report No. 575 of the Fifty-fourth Congress on S. 293. However, Report No. 384 adds the following with respect to the need for some method to settle strikes (page 2):

> While strikes for legitimate objects must be acknowledged as among the rights of labor organizations as among individuals, their cost to the country in the enforced idleness of producers is enormous, and in the check given to the production of wealth tend to aggravate the situation they are designed to improve. By the laborer capital is held responsible because of its unwillingness to pay a given rate of wages for work under certain conditions, and the laborer is held responsible by the capitalist because of his refusal to accept less than he believes is due or to labor in other than what he considers a manner fair to himself. There is no tribunal whereby the questions in dispute can be considered and determined, and industrial war is the natural result. That it is possible to ascertain with some measure of exactness the relation which exists between labor and capital and the rights which each has in respect to the other, is, your committee believes, not impossible. At least it is believed that such fundamental facts may be discovered by careful and systematic study of the problems presented as will be of benefit to the laborer on the one side and to the capitalist on the other.

On the cause of strikes, the report summarizes information furnished by Wright for the period between 1881 to 1894. In other respects the report is similar to Report No. 575 and the House reports. It is significant that both Senate Report No. 384 and its predecessor No. 575 point to the interdependence of the various areas of the country from the business point of view and emphasizes the need of surveying industrial problems on a national scale.

INDUSTRIAL COMMISSION OF 1912

The Industrial Commission of 1912 was established pursuant to an act of Congress (Public, No. 300) approved August 23, 1912. That act, in its pertinent parts, reads as follows:

That a commission is hereby created to be called the Commission on Industrial Relations. Said Commission shall be composed of nine persons, to be appointed by the President of the United States, by and with the advice and consent of the Senate, not less than three of whom shall be employers of labor and not less than three of whom shall be representatives of organized labor.

* * * * * * *

SEC. 4. That the Commission shall inquire into the general condition of labor in the principal industries of the United States, including agriculture, and especially in those which are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the conditions of sanitation and safety of employees and the provisions for protecting the life, limb, and health of the employees; into the growth of associations of employers and of wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into any methods which have been tried in any State or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods for avoiding or adjusting labor disputes through peaceful and conciliatory mediation and negotiations; into the scope, methods, and resources of existing bureaus of labor and into possible ways of increasing their usefulness; into the question of smuggling or other illegal entry of Asiatics into the United States or its insular possessions, and of the methods by which such Asiatics have gained and are gaining such admission, and shall report to Congress as speedily as possible, with such recommendation as said commission may think proper to prevent such smuggling and illegal entry. The Commission shall seek to discover the underlying causes of dissatisfaction in the industrial situation and report its conclusions thereon.

The bill, which became Public, No. 300, was H. R. 21094, introduced by Mr. Hughes on February 29, 1912 (62nd Cong., 2nd sess.). The bill was referred to the Committee on Labor which reported it favorably on May 16, 1912 (H. Rept. No. 726), with amendments not related to the substantive provisions. It was debated and passed in the House on July 17, 1912. It was reported by the Senate Committee on Education and Labor on July 26, 1912, in conjunction with the bill to create the Department of Labor, but the only written report referred to in the document records applies only to the latter bill.

There was no formal report from the Senate committee. H. R. 20194 was passed by the Senate with amendments but without debate on August 15, 1912. The conference report was adopted by both Houses on August 20, and the act was approved on August 23. Except for the addition of the "sanitation and safety of employees" clause, and the clause concerning "smuggling and illegal entry of Asiatics", the subjects provided in H. R. 20194 for the consideration of the Commission remained the same from the introduction of the bill until its enactment.

Turning to the report of the House committee on labor (H. Rept. 726), all of it deals with the existence of widespread unrest, strikes,

and the need for providing peaceful methods of settlement. The report, with irrelevant matter on amendments excluded, reads:

> That there is widespread unrest amongst the wage workers of the country is apparent from the large number of trade disputes which have lately occurred or have recently been imminent. Strikes between labor and capital are like wars between nations; they bring suffering and privation to the participants and particularly the wage workers and those dependent upon them. Yet it is only by sacrifices of this character that they have been able to maintain anything like a fair standard of living or conditions of employment. The body of workmen which would surrender its right to strike would, by virtue of the competition amongst themselves and their employers, be reduced to the lowest possible standard of living. A definite example is found in the iron and steel industry, where the unskilled workmen are unorganized and therefore have no power of collective resistance and have seldom in recent years engaged in a trade dispute. The wages in that industry are the lowest, the hours of labor the longest, and the conditions of employment the worst to be found in any large industry where men are employed in the United States.
>
> When strikes occur not only the persons actually engaged in the contest suffer, but frequently the community in which the struggle occurs and the country at large are greatly inconvenienced while the struggle lasts.
>
> It is difficult to conceive of the wage workers being able to protect themselves and their rights if they have not the power to cease work individually or collectively when the conditions of employment are not satisfactory to them.
>
> Wisdom would dictate that the right to cease work collectively should only be exercised by the workers when other methods have failed to secure terms of employment sufficiently satisfactory for them to work under. With that power held in reserve as a last resort, the discovery and adoption of any method which would materially reduce the necessity of the wage worker's exercising the power to strike in order to obtain justice would be of incalculable benefit to the workers themselves and to the people generally.
>
> It is the purpose of this bill to investigate the entire relationship between employer and employee for the purpose of determining whether or not some existing method of peacefully adjusting trade disputes can be more generally applied or some new method devised out of the various systems now in existence.
>
> The committee believes that the subject matter should be thoroughly investigated with that end in view, and that an appropriation of $500,000, as provided in the committee amendment, is necessary to carry the work to a successful conclusion.

In the debate in the House, Representative Wilson, in charge of the bill, pointed to industrial unrest and strikes much after the fashion of the report, but at greater length. Representative Curley, of Massachusetts, argued for compulsory arbitration, referring to costly strikes of the past. An amendment to the effect that the Commission should recommend uniform legislation to the States, in the words of the act creating the Commission of 1898, was rejected.

PERCENTAGE OF STRIKES DUE TO RESISTANCE OF EMPLOYERS TO LABOR ORGANIZATION

Percent of all strikes, 1881–1905, concerning recognition and union rules, and recognition and union rules combined with other causes [1]

Year	Concerning recognition and union rules (a)	Concerning recognition and union rules combined with other causes (b)	Total (a+b)
1881	5.73	1.06	6.79
1882	5.95	.88	6.83
1883	7.53	2.09	9.62
1884	6.77	2.71	9.48
1885	7.44	.93	8.37
1886	8.73	2.79	11.52
1887	15.60	2.86	18.46
1888	13.69	2.10	15.79
1889	12.65	2.33	14.98
1890	12.88	2.73	15.61
1891	14.27	3.09	17.36
1892	15.25	3.08	18.33
1893	13.72	3.07	16.79
1894	12.45	1.63	14.08
1895	12.35	4.12	16.47
1896	21.93	5.17	27.10
1897	12.99	3.25	16.24
1898	15.72	4.55	20.27
1899	19.53	5.40	24.93
1900	15.35	5.79	21.14
1901	27.98	5.10	33.08
1902	25.27	6.80	32.07
1903	23.24	8.41	31.65
1904	32.42	6.50	38.92
1905	30.86	4.67	35.53
Average (1881–1905)	18.84	4.51	23.35

[1] Board's exhibit 46, table 1 (R. 775).

Source: U. S. Bureau of Labor, Twenty-first Annual Report of the Commissioner of Labor, 1906, pp. 56–57.

Major issues involved in labor disputes beginning in each year, 1919–34, by number and percent of total [1]

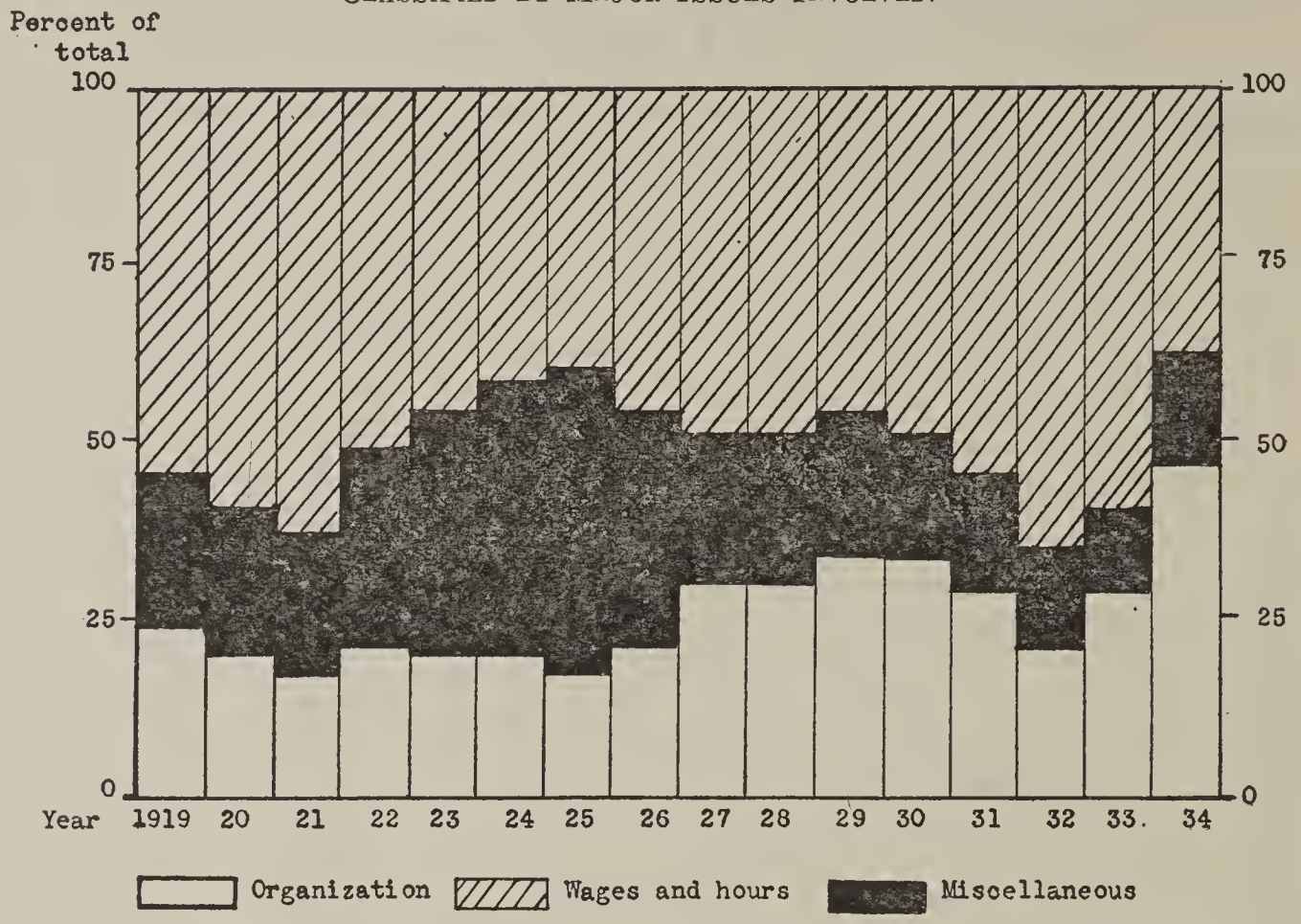
Year	Total	Wages and hours		Organization		Miscellaneous	
		Number	Percent of total	Number	Percent of total	Number	Percent of total
1919	3,630	2,036	56	874	24	720	20
1920	3,411	2,038	60	652	19	721	21
1921	2,385	1,501	63	400	17	484	20
1922	1,112	583	52	226	21	303	27
1923	1,553	721	46	315	20	517	34
1924	1,249	537	43	252	20	460	37
1925	1,301	537	41	223	17	541	42
1926	1,035	478	46	222	21	335	33
1927	734	360	49	224	30	150	21
1928	629	306	49	190	30	133	21
1929	903	414	46	312	34	177	20
1930	653	317	49	219	33	117	18
1931	894	504	56	255	29	135	15
1932	808	534	66	172	21	102	13
1933	1,562	935	60	447	29	180	11
[2] 1934	1,856	727	39	853	46	276	15

[1] Board's exhibit 46, table 2 (R. 775).

[2] Data for 1934 are not strictly comparable to those of previous years, as is explained in the Monthly Labor Review of January 1936, p. 154.

Source: U. S. Bureau of Labor Statistics, Monthly Labor Review, July 1934, table 9, p. 75, and January 1936, table 6, p. 162.

STRIKES AND LOCKOUTS IN THE UNITED STATES BEGINNING IN EACH YEAR, 1919 TO 1934, CLASSIFIED BY MAJOR ISSUES INVOLVED. [1]



Source: U. S. Bureau of Labor Statistics, *Monthly Labor Review,* July 1934, p. 75 and January 1936, p. 162

[1] Board's exhibit 47 (R. 776). Prepared by National Labor Relations Board, Division of Economic Research. Dates for 1934 are not strictly comparable to those of previous years; see *Monthly Labor Review,* January 1936, p. 154.

EFFECT OF STRIKES UPON COMMERCE

STRIKE CLAUSES IN CONTRACTS[9]

Labor disputes so frequently interrupt production and distribution that it has become standard practice for producers to insert in their contracts a clause which conditions delivery of goods or performance of service upon delays due to strikes, as well as riots, acts of God, or other conditions beyond the control of the producer. The legal aspects of these conditioning clauses have been considered by Oakes in Organized Labor and Industrial Conflicts (1927), chapter 24, Effect of Strikes on Liability for Nonperformance of Duty or Contract Obligation, and by Williston in Contracts (1931).

The standard contract forms of the United States Government as used by the Division of Procurement, United States Treasury, provide that the contractor shall not be liable for delays due to strikes. Article 5, of United States Standard Form No. 32, approved June 18, 1935, provides, in part, as follows:

* * * *Provided*, That the contractor shall not be charged with any excess cost occasioned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor in making deliveries due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor * * *.

Transportation agencies commonly protect themselves from liability for delays attributable to strikes in delivery of shipments.

In the uniform bill of lading recommended[10] in 1908 by the Interstate Commerce Commission thereafter in general use on railroads in northern and western parts of the United States both for interstate and intrastate shipments, it is agreed in consideration for a lower rate than that chargeable for carriage under common law liability that no carrier or party in possession of all or any of the property herein prescribed shall be liable for any loss thereof or damage thereto by causes beyond its control; or by floods or by fire; or by quarantine; or by riots, strikes, or stoppages of labor * * * (Williston, Contracts, vol. II, sec. 1107).

In the construction industry, the American Institute of Architects has used standard contract forms adopted in 1905, which make provisions for extending the time of performance accorded the contractor in case of labor disputes (Williston, Contracts, vol. IV, ch. III).

Rule 4 of the contract for sale of silk approved by the Silk Association of America provide: "Seller shall not be liable because of late or nondelivery due to strikes or fires or other causes beyond his control" (Williston, Contracts, vol. IV, ch. III).

Another industry which makes extensive use of these strike clauses is the coal industry in which the use of the clause has given rise to numerous court cases, defining the extent to which the clause protects the shipper (Oakes, op. cit., pp. 564–571).

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[9] Board's exhibit 45 (R. 773).

[10] The Interstate Commerce Commission first prescribed uniform bills of lading in April 1919 (*In the Matter of Bills of Lading*, 52 I. C. C. 671). The power of the Interstate Commerce Commission to issue this order was challenged in the courts, but the Supreme Court held (253 U. S. 113) that the question had become moot since the passage of the Transportation Act of 1920, sec. 25 of which specifically gave the Commission power to prescribe uniform bills of lading.

EXCERPTS FROM "AUTOMOTIVE INDUSTRIES" CONCERNING THE EFFECT OF STRIKES UPON THE AUTOMOBILE INDUSTRY[11]

"Strike Curtails Operations

"SUPPLIES HIT BY TOLEDO WALK-OUT; CHEVROLET SHUTS FIVE PLANTS

"Detroit, May 2.—The strike at the Chevrolet plant in Toledo, now in its second week with no definite indication of when or how it will be settled, to date has resulted in the closing of Chevrolet and Fisher plants in five other cities with the prospect that the St. Louis plant employing 3,200 will close this evening.

"This will leave three assembly branches operating—Baltimore, Buffalo, and Oakland—in addition to the main plant at Flint, which is said to have probably the biggest supply of transmissions on hand. Meanwhile, the crippling effects of the strike are fanning out over a wide area as supplies received stop orders on Chevrolet parts and material."

"Fred Schwahe, business agent for the local on strike in Toledo, has reported to the strike committee at the Chevrolet plant that G. M. is equipping a plant in Muncie, Ind., for the production of Chevrolet transmissions. Mr. Schwahe visited Muncie and on his return said that many workers from the Toledo plant already were in Munice, that 25 strikers had gone there for picket duty at the G. M. plant and at Warner Gear."

"Assembly plants in Tarrytown, Kansas City, Janesville, and Atlanta were closed by the management for lack of transmissions, laying off a total of 7,200 workers. Earlier in the week the Cleveland Fisher plant which makes Chevrolet stampings, including turret tops, was closed by the company. Subsequently union workers are reported to have agreed not to return to work until the Toledo strike was settled. Between 8,500 and 9,000 workers were laid off in Cleveland. The Norwood, Ohio, plant, employing over 2,000, was closed by the strikers whose demands paralleled those at Toledo with the additional one that the management agree not to ship cars assembled there into territories served by other G. M. plants which might be closed by labor troubles.

"Reports coming in indicate that departments in suppliers' plants working on Chevrolet business had been forced to close or curtail business. Among these are Kelsey-Hayes Wheel Co., which closed down its Chevrolet wheel line; the Murray-Ohio Co., the Fort Smith (Ark.) Body Co., Eaton Detroit Metal Co., Trumbull Steel, Corrigan McKiney, and Otis Steel."[12]

"GLASS STRIKES THREATEN PRODUCTION AS NEGOTIATORS SEEK A COMPROMISE

"Strikes which closed plants of the Pittsburgh Plate Glass Co. and threatened walk-outs at the plants of the Libby-Owens Ford Co. appeared as black clouds on the automotive horizon this week. * * *

"Since the automotive industry is very largely dependent on these two companies for its glass supplies and inventories at the

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[11] Board's exhibit 42 (R. 757); see supra, p. 11.
[12] Vol. 72, no. 18, May 4, 1935.

motorcar plants are believed to be inadequate to permit continuation of big-scale production for more than a week or so, the effect of a prolonged interruption in glass shipment is obvious."[13]

"CAR SALES RESUME UP TREND

"DETROIT.—Potentially the labor situation today is perhaps even more critical in some ways than at any time except when a general strike in the industry was threatened.

"There is a rather general feeling that labor organizations will attempt to call strikes when and as producers begin production on new models Unless ameliorated, this situation undoubtedly will result in delaying announcement of new cars well into the fall with consequent expected lower levels of output and employment during the late summer."[14]

EXCERPTS FROM "AMERICAN WOOL AND COTTON REPORTER" CONCERNING THE EFFECT OF TEXTILE STRIKE OF 1934 ON THE INTERSTATE MOVEMENT OF GOODS[15]

"COTTON GOODS INCONVENIENCED

"While inconvenience, due to the strike, became general in the fine gray cloth market last week, hardly any serious misgivings were noted among buyers or producers. Many felt that the strike might prove a blessing, by helping to lift prices nearer to where they should be. Due to timely warnings, mills had shipped out large aggregations of yardage to customers, which served as a bulwark against immediate scarcity. As the seriousness of the labor tie-up became apparent in a number of fine goods mill quarters, many felt impelled to withdraw quotations for the time being. Second-hand sales were more noticeable, and mills, when they could deliver, held for fractionally higher prices. In every instance strike clauses were used in sales notes, to throw the burden of delivery upon buyers."[16]

"KNIT GOODS ACTIVE

"Outerwear manufacturers have been very active. A great deal of the spot business has resulted from the strike in weaving plants."[17]

"WOOL GOODS IRREGULAR

"Some plants closed and unable to make deliveries, and others offer lines at premium.

"Market men in the men's fabric section found a strange situation confronting them in the strike of operatives that kept many plants all or partly shut down. On the one hand, customers sought yardage from plants that could not deliver and were apathetic about the situation in general. From a feeling that the strike would end as suddenly as it started, opinion in the market veered around to where many were prepared to see it longer drawn out than was at first regarded likely."[18]

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[13] Vol. 72, no. 5, Feb. 2, 1935, p. 21.
[14] Vol. 70, no. 20, May 19, 1934, p. 601.
[15] Board's exhibit 43 (R. 758), see supra, p. 10.
[16] Vol. 48, no. 37, Sept. 13, 1934, p. 13, see supra, p. 10.
[17] Ibid., p. 27.
[18] Vol. 48, no. 38, Sept. 20, 1934, p. 22.

"IRREGULAR WEEK IN WOOLENS, SPOTTY, TRADING RESULT OF STRIKE CONDITIONS—ALL SURPLUS STOCKS BEING RAPIDLY DIMINISHED

"Order placing in the men's piece-goods market last week was naturally called spotty. A good many mills remained closed on account of the strike and others were busy completing deliveries against contracts and were usually unable to accept more for the present."[19]

"KNIT GOODS LOOK AHEAD

"Ending of the strike situation is going to be of aid to the related markets. While the knit-goods business was affected in the minor manner directly, yarn difficulties were beginning to be felt, and if the strike continued it would have meant much more serious consequences than have been the case."[20]

EXCERPTS FROM THE "AMERICAN LUMBERMAN" AND FILES OF THE UNITED STATES DEPARTMENT OF LABOR CONCERNING THE EFFECT OF THE 1935 LUMBER STRIKE ON INTERSTATE COMMERCE[21]

"MARKET NEWS FROM AMERICA'S LUMBER CENTERS

"Seattle, Wash.

"Export: No lumber for export has been shipped the past 2 weeks from Puget Sound. * * *

"Western Red Cedar: One large group of mills has shipped no lumber since the strike. * * *"[22]

"Mills and men fear loss of markets.

"Picketing of retail yards in Seattle and throughout the Puget Sound district has hindered deliveries of lumber."

"* * * scarcely a foot of export lumber has moved out of Washington since May 8."[23]

"Longshoremen are refusing to load lumber on vessels from mills on strike, and some lumber carriers are sailing with only part cargoes.

"Half to two-thirds of production is closed down."[24]

"West Coast Market: * * * all of which (the various lumber markets here) are suffering from an almost total paralysis.

"Intercoastal: No shipments, except by the Charles R. McCormick interests, have been made from Puget Sound to the Atlantic coast since the strike.

"Export: When the strike was called May 6, export firms were informed they could continue loading lumber ordered prior to that date, but 2 days later all loading was stopped by the strikers, and no lumber for export has moved since."[25]

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[19] Vol. 48, no. 39, Sept. 27, 1934, p. 9.
[20] Ibid., p. 27.
[21] Board's exhibit 44 (R. 761).
[22] American Lumberman, June 8, 1935, p. 52.
[23] Ibid., May 25, 1935, pp. 40–41.
[24] Ibid., May 11, 1935, p. 23.
[25] May 25, 1935, p. 54.

FILES OF THE UNITED STATES DEPARTMENT OF LABOR

PORTLAND, OREG., 24,
June 25, 1935, 652 a. m.

HUGH KERWIN,
Department of Labor, Washington, D. C.

Confirming telephone conversation today. Situation most serious. Tacoma, Wash., plants reopened today under military protection. Understand only small number men working.

Nine Portland plants planned on reopening today. This has been postponed because three are considering making agreements with brotherhood.—Longview charter was lifted Friday. Plants there will reopen Wednesday. With knowledge and apparent consent of Muir this is likely to be a focal point in the whole situation.

Longshoremen not working at Tacoma. Grave possibility of maritime groups becoming involved. Suggest board be appointed by President to bring about understanding in controversy. Suggest appointment of Father George Thompson, Portland; Judge Smith, superior court judge, Seattle; Judson Shorett, State senator, Seattle. These names were submitted previously by Commissioner Marsh and all have agreed to serve.

If board is appointed it should be done at once.

E. P. MARSH.
P. A. DONOGHUE.

MAY 20, 1935.

E. P. MARSH,
333 United States Courthouse, Portland, Oreg.

Senator Morris Sheppard forwarded following telegram from San Antonio Building Trades Council in part as follows: (Quote) Robert E. McKee has contract for construction enlisted men's barracks and nurses' quarters, Fort Sam Houston (stop) McKee bought plywood to be used constructing these jobs from Washington-Oregon Plywood Co., Tacoma, Washington (stop) Nonarrival this material delayed starting work for about 10 days at this writing. If something not done at once delay will be serious (unquote).

KERWIN,
Director of Conciliation.

THE PROVIDENCE BILTMORE,
Providence, R. I., July 19, 1935.

Honorable FRANKLIN D. ROOSEVELT, *President,*
Washington, D. C.

MY DEAREST PRESIDENT: On May 6th of this year there was started on the Pacific coast a lumber strike, consisting of all logging men, mill men, and stevedores. This strike is still on, a duration of over 10 weeks.

May I call to your attention the fact that at least 50 percent of all structural lumber used in the United States is manufactured on the Pacific coast. This tie-up has resulted in distress to all people receiving their incomes from house building, lumber industry, to say nothing of furniture, brick, lime, plaster, and all other items that are necessary in the construction of building. I myself have been without employment since the strike as I make a living selling Pacific coast lumber and with no lumber to sell I am without my income.

* * * * * * *

I am writing to you to ask if you will not use your influence to get this strike settled? Anyone that can stop a coal strike surely should be able to stop a small lumber strike. At any rate I sincerely trust you will try to do so, because this thing has gone too far to suit me. Thanking you in advance for anything you do, I am,

Devotedly yours,

(Signed) WALTER HENDERSON.

ANTHONY J. DIMOND, MAY 14, 1935, 6:13 a. m.
Delegate from Alaska, Washington, D. C.:

The chamber of commerce at Nome, Alaska, has requested me to send you the following telegram. Fire last September destroyed large portion Nome. Only few buildings replaced to date. Further building delayed, awaiting spring shipments lumber. Present lumber strike situation indicates no lumber can be shipped until strike settled. Steamers scheduled from Seattle for Nome May 23 to June 1. The Alaska mining season is short at best. Delay will be ruinous to our mining, keeping over thousand men out of employment. Urge Government take immediate action to relieve this situation.

G. R. JACKSON,
President, Northwestern Alaska Chamber of Commerce.

Secy. FRANCES PERKINS, BALTIMORE, MD., *May 25, 1935.*
Department of Labor,
Washington, D. C.

DEAR MADAM: As you know, there has been a strike on at the Douglas fir mills on the west coast for about 4 weeks now and from the information I receive there seems to be no sign of its ending, and apparently some 30,000 to 40,000 are out of work.

Late last spring and early last summer there was a stevedore strike which lasted about 3 months and really wrecked the business of those who handle fir lumber and now this year we are going through it all again with the strike at the mills.

* * * * * * *

I would appreciate your advising if your department is taking any action toward settling this strike, and if not, I would respectfully request that you do. No matter who is right in the matter or who is wrong, it certainly is not right to permit industry to be disorganized indefinitely. Thanking you very much.

Yours very truly, ——— ———.

SEATTLE, WASH., *May 15, 1935.*

The PRESIDENT:

Entire poultry and dairy industry is threatened by great hazard due to shutdown of lumber industry in this territory * * * if action not obtained at once producers must stand tremendous loss due to inability to market products.

B. D. RILEY,
Exec. Secy. Seattle Butter, Egg, Cheese, and Poultry Exchange.

PETERSON LUMBER & FINANCE CO.,
West Atlantic St. Near Marine Base, San Diego, Calif., June 8, 1935.

The Honorable MISS PERKINS,
Secretary of Labor,
Washington, D. C.

MY DEAR MISS PERKINS: We are attaching hereto copy of exchange of telegrams we have just had with a large lumber manufacturer who is our source of supply for materials. We have purposely deleted his name, as we have not obtained permission to use it, but we are sending this exchange of telegrams to you in order that you may get an idea of the serious situation with which we are confronted today because of our inability to secure materials on account of labor troubles at the source of supply.

* * * * * * *

We beseech you for prompt action.

Very truly yours, PETERSON LUMBER & FINANCE CO.,
(Signed) J. HAROLD PETERSON.

JUNE 6, 1935.

——— LUMBER CO.:

Will be forced down next week and lose all our customers unless we can get shipment. Can you give me any news? How about shipping from Longview?

PETERSON LUMBER & FINANCE CO.

JUNE 7, 1935.

PETERSON LUMBER & FINANCE CO.:

Regret your situation, however powerless to help as fight in industry stronger than before and all mills down. Longview and Longbell are being forced to shut down by pickets Wednesday; radicals being in control. Local unions repudiating Muir, of the A. F. L., and no settlement in site. Will probably last well into July before industry reopens. Stop. Longshoremen yesterday declared all lumber hot regardless whether pine from inland empire or waterfront fir or whether mills picketed or not picketed. * * *

——— LUMBER CO.

MEMORANDUM, E. P. MARSH, COMMISSIONER OF CONCILIATION, TO SECRETARY OF LABOR

Effect of strike widespread

As an instance of how far flung the strike effects were spread, the instance may be cited of Nome, Alaska, and the Bering Sea area. The city of Nome, almost totally destroyed by fire a year ago, and not yet rebuilt, was depending for its rebuilding problem upon the lumber industry of this region. The mining and fishing industries surrounding Nome and the Bering Sea were the only means of livelihood the residents had, and they were depending upon immediate shipment of lumber products. It also applied to the new relief settlement at Matanuska, Alaska. We found these products tied up in Seattle and surrounding lumber yards, and it took the hardest kind of work on the part of State Labor Commissioner Conners and myself to get this released, but it was done, and the tension in Alaska lessened. Government projects as far distant as Texas were tied up as a result of inability to get strike-bound lumber shipments.

EFFECT OF SHIPBUILDING STRIKE OF 1935 ON INTERSTATE SHIPMENTS[1]

Number of carloads delivered to New York Shipbuilding Co. by Pennsylvania-Reading Seashore Lines, by States and by months, April–November 1935[2]

State	April	May[3]	June	July	August	September	October	November
Pennsylvania	97	21	6	6	1	73	82	120
Massachusetts	3	1	4	1	1	1	2	--
Connecticut	2	--	2	1	2	1	3	9
New York	2	1	--	3	--	--	5	--
Ohio	7	1	1	1	3	--	7	2
Maryland	5	3	--	1	--	1	6	1
Illinois	--	--	1	--	--	--	2	2
Wisconsin	1	1	--	--	--	--	2	1
West Virginia	--	--	--	--	--	3	1	1
Maine	2	--	--	--	--	3	5	--
Indiana	1	--	--	1	--	2	--	1
Michigan	1	--	--	--	--	--	--	--
Oklahoma	--	1	--	--	--	--	--	--
District of Columbia	--	--	1	2	--	--	--	4
Rhode Island	--	--	--	1	--	--	--	--
Tennessee	--	--	--	--	--	--	--	1
Total	121	29	15	17	7	84	115	142

[1] Board's exhibit 41 (R. 747).
[2] Strike at New York Shipbuilding Co. took place from May 11 to Aug. 27, 1935.
[3] From May 1 to 7, 21 carloads were received from these States. After the strike started on May 11, 8 carloads were received during the remainder of the month.

Source: Delivery record of the Pennsylvania-Reading Seashore Lines.

Number of pounds of freight delivered to New York Shipbuilding Co. by Pennsylvania-Reading Seashore Lines, by States and months, April–November 1935 [1]

State	April	May [2]	June	July	August	September	October	November
Pennsylvania	101,928	59,136	22,716	29,332	7,272	36,968	42,195	83,723
Massachusetts	37,179	6,047	25,169	27,456	5,538	5,179	12,079	22,036
Connecticut	4,685	11,615	4,391	9,967	18,967	7,431	12,898	20,087
New York	23,417	15,408	2,176	9,723	11,899	18,813	24,370	27,460
Ohio	5,340	1,882	159	523	917	13,663	10,939	17,445
Maryland	2,865	1,230	2,593	904	-------	-------	3,036	3,730
Illinois	6,940	9,694	2,900	2,701	11,107	4,905	4,758	16,875
Wisconsin	30	57	-------	-------	-------	8,582	30	-------
West Virginia	383	123	-------	-------	-------	1,991	8,045	-------
Indiana	56	222	-------	-------	294	870	1,306	181
Michigan	3,531	1,310	-------	-------	-------	3,451	272	1,692
District of Columbia	-------	3,765	3,570	-------	-------	-------	-------	1,750
Rhode Island	2,442	-------	-------	-------	-------	871	138	595
Tennessee	-------	-------	-------	-------	-------	1,420	178	-------
Virginia	-------	200	-------	-------	-------	-------	-------	-------
New Hampshire	-------	-------	380	-------	-------	-------	365	261
Kentucky	-------	-------	-------	150	-------	-------	-------	-------
Delaware	-------	-------	-------	-------	1,020	-------	-------	-------
Vermont	-------	-------	-------	-------	-------	178	-------	-------
Minnesota	-------	-------	-------	-------	-------	100	-------	-------
Total	188,796	110,689	64,054	80,756	57,014	104,422	120,609	195,835

[1] Strike at New York Shipbuilding Co. took place from May 11 to Aug. 27, 1935.
[2] From May 1 to 11, 72,503 pounds received. After the strike started, the total received during remainder of month was 38,186 pounds.

Source: Delivery records of the Pennsylvania-Reading Seashore Lines.

New York Shipbuilding Co.'s delivery record of the Pennsylvania-Reading Seashore Lines

CARLOADS BEFORE, DURING, AND AFTER STRIKE MAY 11–AUG. 27, 1935

Date	*Number of Carloads*
Apr. 1–May 10:	
Apr. 1–30	121
May 1–10	21
Total	142
May 11–Aug. 27 (strike period):	
May 11–31	8
June 1–30	15
July 1–31	17
Aug. 1–27	7
Total	47
Aug. 28–Nov. 30:	
Aug. 28–31	None
Sept. 1–30	84
Oct. 1–31	115
Nov. 1–30	142
Total	341

New York Shipbuilding Co.'s delivery record of the Pennsylvania-Reading Seashore Lines—Continued

CARLOADS—APRIL–NOVEMBER 1935

Date—month	State of origin	Number of car loads	Articles shipped
April	Pennsylvania	97	Rivets, coal, beams, plates, gas and oil, beams and channels, armor plate, plates and angles, forgings, brass castings, steel bars, channels, plates and bars, castings, plates and strips, pipe, sheet steel, machines, beams and angles.
	Massachusetts	3	Machinery parts, machinery and parts, machinery.
	Ohio	7	Pipe, sheets, oil burners, steel, rollers.
	Indiana	1	Plate steel.
	Connecticut	2	Wire.
	Wisconsin	1	Machinery.
	Michigan	1	Brass sheets.
	Maine	2	Lumber, beams and angles.
	New York	2	Parts, sleeping berths.
	Maryland	5	Lumber, plates, steel plates.
Total		121	
May 1–7	Pennsylvania	18	Pipe, gas and oil, plates, machines, armor plate, beams, deck plates, steel bars, castings, parts, angles, rivets, steel chains.
	Massachusetts	1	Electric meters.
	Ohio	1	Steel sheets.
	Maryland	1	Plates.
Total		21	
May 15–31	Pennsylvania	3	Pipe, plates and angles, angles and bars.
	Wisconsin	1	Machinery.
	Oklahoma	1	Plates.
	Maryland	2	Railroad ties, sheet steel.
	New York	1	Cards.
Total		8	
Total May 1–31		30	
June	Pennsylvania	6	Channels, bars, plates, parts, steel, steel forgings, footwalks.
	Massachusetts	4	Parts.
	Ohio	1	Wire.
	Connecticut	2	Do.
	Illinois	1	Parts.
	District of Columbia.	1	Do.
Total		15	
July	Pennsylvania	6	Plates and bars, beams, channels, parts, coal.
	Massachusetts	1	Equipment.
	Ohio	1	Sheets.
	Indiana	1	Steel.
	Connecticut	1	Tubes.
	Rhode Island	1	Parts.
	New York	3	Parts, metal furniture, cables.
	Maryland	1	Plates.
	District of Columbia.	2	Gun parts, machinery.
Total		17	
August 1 and 6	Connecticut	2	Machinery parts.
6	Ohio	3	
14	Massachusetts	1	Fittings.
20	Pennsylvania	1	Coal.
Total		7	

New York Shipbuilding Co.'s delivery record of the Pennsylvania-Reading Seashore Lines—Continued

CARLOADS—APRIL–NOVEMBER 1935—Continued

Date—month	State of origin	Number of car loads	Articles shipped
September	Pennsylvania	73	Steel bars, coal, plates and bars, fire bricks, armor plate, forgings, fuel oil, steel plates, galvanized angle plates, angles, channels, plates, aluminum, beams and angles, beams and channels, beams, wrought pipe, pipes, propeller wheels.
	Maine	3	Lumber.
	West Virginia	3	Spruce lumber, lumber, coal.
	Maryland	1	Steel plates.
	Connecticut	1	Pump units.
	Indiana	2	Electric motors, pipes.
	Massachusetts	1	Electric buzzers.
Total		84	
October	Pennsylvania	82	Plates, coal, bars, angles and beams, fuel oil, castings, pipes, channels, springs, steel fittings, steel sheets, steel plates, steel, fire brick, parts, iron tanks, armor plates.
	Connecticut	3	Tubes.
	Maryland	6	Plates.
	Ohio	7	Welding wire, machines, weldings, sheets.
	Illinois	2	Fittings, valves.
	Maine	5	Lumber, pine lumber.
	West Virginia	1	Coal.
	Wisconsin	2	Machinery.
	Massachusetts	2	Parts, equipment.
	New York	5	Machinery, rheostats, sleeping berths, metal, parts.
Total		115	
November	Pennsylvania	120	Structural steel, armor plates, steel bars, sheet steel, propeller wheels, bar steel, transformers, pipe, machined forgings, steel castings, nut coal, fuel oil distillate, spruce lumber, bars and plates, wire, plates and beams, bolts and nuts, rivets, galvanized plates, smokestack plate, galvanized frames, egg coal, deck plates, fire clay. X
	District of Columbia.	4	Gun mount parts, torpedo tube, airplane landing catapult.
	Connecticut	9	Copper wire, brass and copper tubes, turbine pump.
	Ohio	2	Plate steel, refrigerator machinery.
	Indiana	1	Generator parts.
	Maryland	1	Steel plates.
	West Virginia	1	Nickel copper sheets.
	Wisconsin	1	Machinery.
	Tennessee	1	Aluminum sheet.
	Illinois	2	Machine.
Total,		142	

TRANSIT PRIVILEGES UNDER THE INTERSTATE COMMERCE ACT FOR GOODS IN PROCESS OF MANUFACTURE[26]

The Interstate Commerce Act requires that rates and charges of common carriers by railroad be published and filed with the Interstate Commerce Commission and that charges based upon the rates so filed must be collected and retained by the carrier or carriers performing the transportation, it being illegal to assess charges greater or less than those resulting from the filed tariffs. From the beginning it has been held that each shipment is an entity in applying the rate provisions of the act. Therefore, each separate shipment must be treated independently of every other, except and unless some appropriate tariff provision has been lawfully filed connecting two shipments, otherwise physically separated, into a single entity for rate-making purposes. Tariff arrangements for the connecting up of two separate shipments and the assessment of charges thereon less than those which would under the tariffs be applicable to the two shipments treated independently, are known as transit arrangements.

In its simplest form the transit consists merely of stopping a given shipment, usually a carload, somewhere in transit for the purpose of inspection or some similar reason and reforwarding the consignment in its original form. But even before definite control of rates was placed in the hands of the Commission in 1906, transit had progressed far beyond this stage. Not only were goods unloaded from cars and surrendered by the carrier to the consignee, but it was common to permit the reshipment of almost any commodity under the guise of a continued movement of the in-bound shipment. By reason of the abuses then prevalent, the Commission made a general investigation of transit in 1912 and, in its findings, reported in volume 24, in effect held that transit could be permitted only if the identity of the in-bound shipment were preserved. In other words, it was held that transit went no further than the actual reforwarding of the same goods either in their original form or in the form of some product manufactured therefrom. But immediately after the issuance of this report carriers and shippers of commodities subject to transit, principally grain and grain products, urged upon the Commission that transit so limited would be unworkable and that without substantially unlimited right to substitute, transit as then in effect could no longer be used by operators such as flour mills, for reasons which it is not necessary here to state. As a consequence, in later years the Commission has in effect receded from its position that transit may go no further than the reforwarding of the same goods, in the original or some manufactured form.

Transit as now in effect falls in two general classes, first, where the goods do not leave the possession of the carrier but are stored

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[26] Board's exhibit 35 (R. 535), by W. V. Hardie, director, Bureau of Traffic, Interstate Commerce Commission.

in warehouses provided by it and remain in the custody of the carrier while in storage; second, where the goods are surrendered at the transit point to the consignee and remain in his possession wholly independent of the carrier until such time as an outbound shipment is made. By far the major percentage of transit at the present time is of the second of these two classes.

Transit also may be otherwise subdivided into two classes, first, where the final charges are based on the through rate from the point of origin of the original shipment to the destination of the outbound shipment, sometimes with and sometimes without an extra charge for the transit service or for out-of-line hauls that may result therefrom; second, where no attempt is made to apply a through rate but merely one or both factors which otherwise would be applicable to the separate in-bound and out-bound movements are made less through the connecting up of such in-bound and out-bound shipments.

In practically all cases it is really a misnomer to refer to the movement into the transit point as an in-bound transit shipment. In other words, the goods are shipped from point of origin to a given destination without any notice to the carrier that there is any intention of seeking or obtaining a transit privilege at such destination. The shipment is made exactly the same as any other complete shipment. Upon arrival at the destination the freight charges are paid and so far as the books of the carriers show there is no intention of connecting up this shipment with any future movement from such point. In a few instances provisions are made for registration of the expense bills representing the charges paid on the in-bound shipments so as to make them available for later transit use. But such arrangements are the exception rather than the rule. In other words, the goods pass into the custody of the consignee exactly the same as in the case of any other shipment, either of the same or some other commodity as to which no transit is available. In fact, a considerable percentage of goods forwarded to points known as transit points never are reforwarded as transit shipments. Wherever transit houses are located in large cities such as Chicago, St. Louis, or Kansas City, there is considerable local consumption and in addition there are many out-bound shipments made either by vessel or by truck without any use of transit. The consignee has complete possession of the goods and has the right to dispose of them at will. Using grain as illustrative, numerous different shipments of grain of the same grade originating at various points are mixed in common bins, thus completely losing the identity of any in-bound shipment. At the transit point ownership frequently changes. Transfers are made from one warehouse to another at the transit point. The consignee has the right either to use transit within certain limits or not to use it at all.

When it is desired to make an outbound shipment and receive the benefit of a total charge less than that which would be applicable to an inbound shipment and an outbound shipment treated independently of each other, in most cases all that is required is the surrender of an expense bill representing the payment of charges on a certain quantity of an inbound commodity that could conceivably be representative of the outbound shipment offered. In some cases

it is permissible to surrender an expense bill not representative of the outbound shipment. For example, mixed animal and poultry feeds are permitted to be shipped from transit points on the balance of a through rate applicable to corn, and an expense bill representing an inbound carload of corn frequently may be surrendered against a carload of mixed feed consisting of not more than 50 percent corn, the remainder consisting of various commodities, some of which are not even themselves entitled to transit. Among other ingredients are molasses, various medicines, cottonseed cake and meal, and many others. Transit is common on logs or rough lumber manufactured into finished lumber or various finished products, sometimes even including articles so completely manufactured as furniture. On logs there is usually no attempt to connect up any one inbound shipment with any outbound shipment. All that is required is at the end of a given period to show that a given aggregate quantity of furniture or some other outbound commodity has been shipped, whereupon reduction is made in the inbound rate on a corresponding quantity of logs, accompanied usually by a weight allowance for wastage in manufacture. No inbound expense bills on logs are matched up against any outbound shipments.

Summed up, transit has been recognized as a legal fiction connecting up directly or indirectly some inbound shipment with some outbound shipment in a way to enable a lower charge to be made on the two separate movements than if each shipment were assessed the applicable tariff charges independently of the other. The theory behind transit is that the two movements taken together constitute a continuous movement interrupted in transit. But as above explained, in practice transit goes far beyond this principle and there is very little connecting up of any actual inbound movement with any actual outbound movement. In this connection attention is called to the decision of the Supreme Court in *A., T. & S. F. Ry.* v. *United States*, 279 U. S. 769, where the Court had under consideration grain originating on the Atchison, Topeka & Santa Fe Railway and receiving transit at Kansas City, with later reshipment to the Gulf under a system involving the surrender of an inbound expense bill. The Court held among other things that the facts of record warranted the conclusion that

> The inbound and outbound movements of the Kansas City grain to which the proportional rates apply, were wholly independent and distinct, and the fiction of a "through rate with transit privilege" could not convert them legally into a through movement from Dodge City to the Gulf.

Under the Interstate Commerce Act carriers in the first instance have the right to determine and file their own charges with the Commission subject to the provisions of law that such charges shall not be in excess of reasonable, shall not be unduly preferential or prejudicial and shall comply with certain other requirements. Inasmuch as the granting or withholding of transit is in effect nothing but a change in the rate, the carrier has the same right to publish, or decline to publish, a transit arrangement on a given commodity at a given point, subject to the provisions of the act and the powers of the Commission granted thereunder. In early years it was held that the Commission had no power to require transit and that in

effect its only real jurisdiction over it was to require that there be no undue discrimination. But in a case which went to the Supreme Court (*Central R. Co. of New Jersey* v. *United States*, 257 U. S. 247) the Court held that the Commission could as a matter of reasonableness require transit if the facts warranted such a conclusion. It was further held that even where transit is granted on the basis of a joint through rate from the first point of origin to the final destination, the granting of the transit was a local matter to each carrier in the route of movement and therefore it was not unduly prejudicial for one carrier participant in the joint through rate to decline to grant transit, even though another had provided such arrangements and the result was to bring about serious disadvantage to an industry on the line of the carrier declining to grant transit.

Transit is almost universally used on grain, particularly wheat. Except where grain is exported in the original form or except where such grains as corn or oats are shipped for final consumption in their original form, practically all grain receives a transit arrangement before it finally passes into the hands of the consumer. Such transit may be for the purpose of storage, cleaning, or inspection, or for the purpose of milling or blending. The only other major commodity of which I have present recollection as to which transit is almost universally used is cotton. Practically all cotton is stopped between the gin point where it originates and the cotton mill where it is consumed or the port from which it is exported, either for the purpose of compression in transit or to enable the assembly of numerous small lots into larger lots of even grade or staple to facilitate its marketing. Compression is almost solely for the purpose of economy in transportation. Although there are numerous transit arrangements on various other commodities, grain and cotton are among the very few major commodities on which transit is anywhere nearly in universal use. Transit in some form or another is available on sugar, eggs, poultry, logs and lumber, livestock, coal, cotton, cottonseed and its products, wool, certain iron or steel articles, and various other commodities. But as to practically all of these the transit is used only in particular cases or under particular circumstances. This may be illustrated as follows: Comparatively little sugar receives any transit other than storage in transit after it has been manufactured, and probably less than half of the sugar marketed even receives transit of this kind. Certain kinds of fruits, such as apples, in numerous cases receive storage in transit, but there is little or no transit on fruits or vegetables for the purpose of manufacture into any other commodity. Livestock may be stopped in transit for feeding and, in certain instances, to try markets, but probably the major percentage of the livestock shipped by rail receives no transit. In a few instances coal may be washed after it is taken from the mine after it has received a short rail haul to a point where washing facilities are available, but by far the larger portion of the coal transported by rail receives no transit. Cottonseed oil and other vegetable oils quite generally receive refining-in-transit privileges, but transit is not common in some territories on other cottonseed products. Structural or sheet iron or steel may be fabricated in transit into material suitable for bridges, buildings, tanks, and other articles but transit is practically unknown in the actual manufacture of the steel. The original pur-

pose of almost all transit was an effort of the originating railroad to obtain the long haul for itself by making an inducement to the owner of the goods to ship the product after storage or manufacture by the same line that brought the raw material into the processing point in the first instance, thus tending to prevent movement out of the processing point by some other railroad. In recent years in a number of instances the same principle has been applied in an effort to prevent movement out of the storage or processing point by truck through providing transit arrangements under which the charges on the two movements separately, if both made by rail, would be less than if treated as independent shipments.

I also submit a statement consisting of five sheets containing extracts from various decisions of the Interstate Commerce Commission and of the courts relative to transit.

It should be understood that this statement has been prepared on short notice with little or no opportunity for study of the subject, so that the statements made are largely from memory. They are believed to be in all respects correct but should be accepted with the reservations indicated. Further, this should not be understood to be an official statement from the Interstate Commerce Commission but strictly personal of my own.

GOVERNMENTAL INTERVENTION IN LABOR DISPUTES

EXCERPTS FROM "LABOR AND THE GOVERNMENT" BY THE TWENTIETH CENTURY FUND [27]

A noteworthy study and comprehensive survey of labor relations and labor problems in the United States was made in 1935 by a staff of distinguished economists under the auspices of the Twentieth Century Fund, founded by Edward A. Filene. A special committee of the Fund, including William H. Davis, chairman, formerly national compliance director of the N. R. A., William L. Chenery, editor of Collier's Weekly, Henry S. Dennison, president of the Dennison Manufacturing Co., William M. Leiserson, chairman of the National Mediation Board for the railroad industry, Sumner H. Slichter, professor of business economics, Harvard University, and John G. Winant, formerly governor of New Hampshire, and chairman of the President's Committee to investigate the general textile strike, sponsored the investigation, gave advice and counsel to the research staff and formulated a program for legislative action.

The recommendations of the Committee were drafted independently of and without any knowledge of any plans of Senator Wagner and Representative Connery for Federal legislation. It turned out, however, that the Twentieth Century Fund Committee and Senator Wagner publicly announced their programs almost simultaneously.

William H. Davis, chairman of the Twentieth Century Fund Committee, while a witness before the Senate Committee on Education and Labor, in the course of hearings conducted by the Committee on the National Labor Relations Act (hearing before Committee on Education and Labor, U. S. Senate, 74th Cong., 1st sess. pt. 3, p. 705) stated that the Twentieth Century Fund Committee "had been following a course of reasoning and had come to conclusions which were fundamentally in accord with those thoughts expressed in the Wagner Bill."

The work of the research staff included a study of the organizational structure, functions, and activities of trade-unions, employers' associations, and company unions, as well as a comprehensive treatment of Government intervention in labor disputes, including the role played by the Government in the past, particularly in railroad labor relations, and the work of the numerous governmental agencies heretofore set up to bring industrial peace out of industrial chaos.

Based upon this comprehensive survey of the experience of the past, the Committee formulated a comprehensive program of action and suggestions for Federal legislation. Its findings and recommendations, strikingly similar to the provisions of the present National Labor Relations Act, included the following:

> In the study that has been made of the role of the Government in labor relations collective bargaining between employers and their employees stands

[27] Board's exhibit 15 (R. 122).

out as of predominant importance. From a difficult birth in the days when the banding together of employees to make demands on their employers was looked upon as an unlawful conspiracy in restraint of trade, the practice has grown to its present stature. In recent years, under the Coolidge and the Hoover administrations and under the present administration, the policy of the United States to protect and foster the right of the employees to organize and to choose their own representatives for collective bargaining without interference, restraint, or coercion has been declared and reiterated by Congress.[28] * * * The effective development for collective bargaining presents, we believe, the most immediately pressing problem in the relation of the Federal Government to labor.

* * * We believe that reclarification of the law by further definition of prohibited practices is possible, and that the need for more adequate administrative and enforcement machinery has been demonstrated by experience (pp. 363–364).

SPECIFIC RECOMMENDATIONS

We make the following recommendations and suggestions:

1. We recommend the enactment of a Federal labor law, separate from the Recovery Act and applicable to all industries (except railroads, which are already covered by the Railroad Labor Act), guaranteeing to the workers freedom for association, self-organization, and choice of representatives, and designed to encourage and sanction collective agreements with respect to hours, wages, and working conditions (italics in original).

It is desirable that, with such particularity as is reasonably possible but without limitation, the act should define and declare to be unlawful specific acts of interference, restraint, or coercion. Thus we believe it should be declared to be unlawful:

(*a*) For anyone to intimidate or coerce employees in the free exercise of their right to organize and to choose their own representatives for collective bargaining;

(*b*) For an employer to discriminate against or in favor of an employee for any activity in connection with any employee organization, selection of representatives for collective bargaining; but this should not impair the right of an employer to make a collective agreement that requires membership in a particular employee organization as a condition of employment where the employee organization with the bargain which is made represents the majority of the employees in an established bargaining unit;

(*c*) For an employer to interfere in any way with the formation or administration of any collective bargaining agency of his employees or with the choice of employee representatives for collective bargaining, or to contribute financial or equivalent support to any such collective bargaining agency; but the allowance of regular rates of pay to an employee for time devoted during working hours to his duties as a representative of the employees should not be forbidden; and

(*d*) For an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act (pp. 366–367).

The Commission should be given the power to enforce its decisions by cease and desist orders, enforceable in the United States Circuit Courts of Appeals at the instance of the Commission and reviewable in those courts at the instance of any party aggrieved by any order of the Commission granting or denying relief. The Commission should have full power of investigation and examination of witnesses, with the right to subpena witnesses, pay rolls, and other records, and to administer oaths. It should have the power to appoint regional directors and examiners, and to establish or utilize such local agencies or industry boards as may be found necessary. It should have the power to delegate its powers of investigation and examination of witnesses and its power to conduct elections, but it should not be permitted to delegate its power to issue cease and desist orders or its power to order elections. The jurisdiction of the Commission to issue cease and desist orders, to determine bargaining units, and to order elections in disputed cases, should be exclusive

[28] This policy is declared in the Railway Labor Act, 45 U. S. C. 151a, May 20, 1926; in the Norris-La Guardia Anti-Injunction Act, 29 U. S. C. 102, Mar. 23, 1932; the Bankruptcy Act (interstate railroads), 11 U. S. C. 205, as amended Mar. 3, 1933; the National Industrial Recovery Act, 15 U. S. C. 707a, June 16, 1933; and in the amended Railway Labor Act, 45 U. S. C. 152, June 21, 1934.

of all other agencies. The Commission should have the discretion to defer its exercise of jurisdiction until it is satisfied that all other available means of settlement have been utilized (p. 367–368).

The Committee considered the problem of majority representation and made the following recommendation:

We believe that the representatives chosen by a majority of employees in any bargaining unit should be the exclusive representatives for all other basic working employees in that unit for collective bargaining as to wages, hours, and other basic working conditions. But it should be understood that nothing in the act will deprive any individual or minority group of the right to present to their employer grievances which do not affect the wages, hours, or other working conditions established by collective agreement.

The right of employees to organize and to choose their own representatives is a right with which the employer should not interfere in any way. Any such interference prohibited by the act becomes a violation of law. It is not a labor dispute and is not susceptible of mediation. Disputes about employee organization and selection of representatives, leading to adjudication as to appropriate bargaining units and to the holding of employee elections, can properly arise only between groups of employees (p. 368).

As to government intervention, the Committee found:

Government intervention in the economic life of a people is as old as government itself. The idea was brought to our shores from the mother country. And the British, in common with the rest of Europe, inherited it from the ancients. No people can exist and function collectively without some form of government guidance and control. The degree depends upon the economic condition of the country and the political balance of the various social groups (p. 139).

Government intervention in the economic life of the colonists was introduced with their earliest settlements. Intervention in a modified form continued with the formation of the Nation, and the degree increased as the country grew. Critical situations were the prime moving factors (p. 163).

Within the last two decades the Government has twice been impelled to resort to widespread intervention. The war emergency which induced such intervention resulted from the need to obtain maximum production. The present crisis is a result of the failure of the system to withstand the ferocious downward trend of the business cycle. Consequently its repercussions are more fundamental than those of the war period. In the words of an eminent student of social affairs.[29]

"Central control over social and industrial forces is an almost inevitable outcome of the economic development of the time * * *. The whole delicate structure of modern industry is increasingly intertwined with governmental functions, and will continue to be so in the future, not as a result of any theory whatever, but as the inevitable consequence of the closer integration of social and political life" (p. 164).

Upon collective bargaining and trade unions the report says:

* * * Collective bargaining which culminates in trade agreements between employers and responsible, disciplined labor organizations seems to be the most feasible method yet devised for bringing about mutually satisfactory and peaceful industrial relations, provided the agreements set up adequate adjustment machinery (p. 9).

Notwithstanding these potential difficulties, collective bargaining must be endorsed as public policy because only by means of it can approximate equality of bargaining power between employers and employees be attained. Further, only through collective bargaining and the resultant trade agreements can we hope for the establishment of industrial peace dependent not upon keeping employees in a state in which they are powerless to resist, nor upon compulsion applied by government, but flowing instead from mutual consent and satisfaction (p. 310).

Once the desirability of collective bargaining has been recognized the next step is obviously the organization of workers in unions that are able to carry

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[29] C. E. Merriam, Government and Society in *Recent Social Trends* (Report of President Hoover's Research Committee on Social Trends), vol. II, pp. 1502, 1540.

on their part of the bargaining function. If the great majority of the workers are unorganized they cannot bargain collectively. If they are organized in ineffectual or clumsily set up groups, further weakened by internal conflict, their success in the bargaining process will also be hampered (p. 310).

The creation of effective agencies for collective bargaining is only one side of the picture. The other side is the establishment of certain rights of self-organization which must be specifically affirmed and rigidly enforced. Of these the first and most important is labor's right to organize and to bargain collectively through representatives of its own choosing. This right was explicitly established by statute in section 7 (a) of the N. I. R. A., but long before the passage of this act it was a right which had become as fundamental to trade-union policy as the right to vote, and as indistinguishable from labor's concept of freedom and justice (p. 338).

It is clear, therefore, that a permanent statute affirming the right of employees to organize must affirm also their right to bargaining collectively for the purpose of making trade agreements. And the organization of employees must proceed free from any interference or from any attempts at domination by the employer or his agents (p. 339).

HISTORY AND EXPERIENCE OF THE NATIONAL WAR LABOR BOARD [30]

I. History of the Formation of the National War Labor Board

In the autumn of 1917 it became apparent, after the Federal Government's comprehensive efforts, that solution of numerous and growing labor disputes required coordination and unification. As early as September 6, 1917, the National Industrial Conference Board submitted by invitation of the Council of National Defense a proposal for the creation of a Federal board to adjust labor disputes. Acting upon these suggestions the council on December 13 called an interdepartmental conference made up of representatives of the various production departments. The report of this conference, which was made on December 20, 1917, suggested among other remedial measures, "machinery which will provide for the immediate and equitable adjustment of disputes in accordance with the principles to be agreed upon between labor and capital and without stoppage of work." Action on the matter was deferred until the return of the Secretary of Labor who at that time was in the West with the President's Mediation Commission. Upon the return of the Secretary early in January the matter was again taken up and on January 4 the suggestion was submitted to the President, who, on that date, appointed the Secretary of Labor as labor administrator with authority to take steps to organize a labor administration along lines of the report of the interdepartmental conference.

In carrying out this program the Secretary of Labor called to his assistance an advisory council of seven members chosen to represent various interests, with a representative of the general public as chairman. The members of this committee were as follows: Hon. John Lind, chairman; Waddill Catchings and A. A. Landon, representing employers; John Casey and John B. Lennon, representing wage earners; Miss Agnes Nestor, representing women; Dr. L. C. Marshall, economist to the council.

This council first met on January 16 and 3 days later presented to the Secretary a memorandum recommending the appointment of a conference of 12 persons representing employers, wage earners, and

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[30] Board's exhibit 36 (R. 567); see supra, p. 45.

the public for the purpose of negotiating agreements for the war period, "having in view the establishment of principles and policies which will enable the prosecution of production without stoppage of work."

The Secretary approved this memorandum and created on January 28 a body known as the War Labor Conference Board. Convinced that the success of principles formulated to guide war labor administration would be conditioned upon their acceptance by both capital and labor and that it was therefore essential that both parties should formulate them, the Secretary called upon the National Industrial Conference Board and the American Federation of Labor as representatives of employers and wage earners respectively to appoint representatives to this Board. Each group was invited to choose its chairman who should preside on alternate days. The personnel of the board thus chosen was as follows:

Joint chairmen: Hon. William Howard Taft and Hon. Frank P. Walsh.

Representing employers: Loyall A. Osborne, C. E. Michael, W. H. Van Dervoort, B. L. Worden, and L. F. Loree.

Representing wage earners: Frank J. Hayes, William L. Hutcheson, William H. Johnston, Victor A. Olander, and T. A. Rickert.

ADOPTION OF PRINCIPLES AND POLICIES TO GOVERN INDUSTRIAL RELATIONS DURING THE WAR

This Conference Board, which began its sessions on February 25, handed down a unanimous report on March 29, suggesting the appointment for the period of the war of a National War Labor Board, consisting of the same number and appointed in the same manner as the Conference Board making the recommendation. This report suggested the powers and functions which such a board should assume, and set forth certain principles and policies to govern relations between workers and employers in war industries for the duration of the war. These principles, agreed upon unanimously and voluntarily by both workers and employers, were as follows:

There should be no strikes or lockouts during the war.

Right to organize.—1. The right of workers to organize in trade unions and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.

2. The right of employers to organize in associations or groups and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the workers in any manner whatsoever.

3. Employers should not discharge workers for membership in trade unions, nor for legitimate trade union-activities.

4. The workers, in the exercise of their right to organize, shall not use coercive measures of any kind to induce persons to join their organizations, nor to induce employers to bargain or deal therewith.

Both Hon. William Howard Taft, then ex-President of the United States and later Chief Justice of the United States Supreme Court, and Hon. Frank P. Walsh, formerly chairman of the Industrial Commission in 1912, joined in the enunciation of these principles.

The following statements by Mr. Taft and Mr. Walsh were made on March 29, 1918, with respect to the program for a National War

Labor Board and the principles upon which such Board was to function. Mr. Taft declared:

I am profoundly gratified that the conference appointed under the direction of Secretary Wilson has reached an agreement upon the plan for a National Labor Board to maintain maximum production by settling obstructive controversies between employers and workers. It certainly is not too much to say that it was due to the self-restraint, tact, and earnest patriotic desire of the representatives of the employers and the workers to reach a conclusion. I can say this with due modesty, because I was not one of such representatives. Mr. Walsh and I were selected as representatives of the public. Personally, it was one of the pleasant experiences of my life. It brought me into contact with leaders of industry and leaders of labor, and my experience gives me a very high respect for both. I am personally indebted to all of the Board, but especially to Mr. Walsh, with whom, as the only other lawyer on the board, it was necessary for me to confer frequently in the framing of the points which step by step the conference agreed to. Of course, the next question is, "Will our plan work?" I hope and think it will if administered in the spirit in which it was formulated and agreed upon.

Mr. Walsh stated:

The plan submitted represents the best thought of capital and labor as to what the policy of our Government with respect to industrial relations during the war ought to be. Representing capital were five of the largest employers in the Nation, but one of whom had ever dealt with trade unions, advised and counseled by ex-President Taft, one of the world's proven great administrators and of the very highest American type of manhood. The representatives of the unions upon the Board were the national officers of unions engaged in war production and numbering in their ranks considerably over 1,000,000 men and women.

The principles declared might be called an industrial chart for the Government securing to the employer maximum production, and to the worker the strongest guaranty of his right to organization and the healthy growth of the principles of democracy as applied to industry, as well as the highest protection of his economic welfare while the war for human liberty everywhere is being waged. If the plan is adopted by the Government, I am satisfied that there will be a ready and hearty acquiescence therein by the employers and workers of the country so that the volume of production may flow with the maximum of fruitfulness and speed. This is absolutely essential to an early victory. The industrial army, both planners and workers, which are but other names for employers and employees, is second only in importance and necessity to our forces in the theater of war. Their loyal cooperation and enthusiastic effort will win the war.

On April 8, 1918, President Wilson, by official proclamation, announced the appointment of the National War Labor Board, with personnel the same as the War Labor Conference Board, including Mr. Taft and Mr. Walsh, and further declared the principles set forth above and recommended by the War Labor Conference Board as the principles for the functioning of the National War Labor Board.

In addition, President Wilson nominated the following to constitute a panel from which umpires should be chosen: Henry Ford, Detroit, Mich.; Matthew Hale, Boston, Mass.; James Harry Covington, Washington, D. C.; Charles Caldwell McChord, Washington, D. C.; V. Everit Macy, New York City; Julian William Mack, Chicago, Ill.; Henry Suzzallo, Seattle, Wash.; John Lind, Minneapolis, Minn.; William R. Willcox, New York City; Walter Clark, Raleigh, N. C.

II. The Work of the National War Labor Board

The work of the National War Labor Board is summarized as follows in Labor Problems and Labor Administration During the World War by Prof. Gordon S. Watkins, University of Illinois, Studies in the Social Sciences, Volume VIII, No. 3:

"The National War Labor Board served as an industrial supreme court for the period of the war. The principal object in its creation was the removal of the causes of interrupted production by providing a means by which parties to controversies might continue their industrial efforts in the knowledge that their differences would be adjudicated fairly and honestly on the basis of principles formulated by both sides and guaranteeing fundamental justice to both sides. To a great extent this object was realized. The Board played a large part in the stabilization of industrial relationships to the end that war production of the country was not only maintained but increased to the maximum in the history of the country. Furthermore, it did much to educate employers, employees, and the public in regard to some of the fundamental aspects of industrial relationships."

EXTENT OF THE BOARD'S WORK

"The awards and findings of the Board for which information is available directly affected more than 1,100 establishments, employing approximately 711,500 persons, of whom about 90,500 were employees of street railways. These numbers include only those persons who were specified directly in the terms of the decisions. The influence of the Board's decisions, however, was vastly wider than these numbers indicate. In many cases the decision was applied in practice to other employees of a plant than those in whose names the controversy was filed, and very frequently a decision in regard to one company was accepted by other companies similarly situated. There was a growing inclination on the part of employers voluntarily to adjust hours and working conditions in conformity with the decisions already rendered by the Board. In many instances controversies were settled by other adjustment agencies in accordance with the principles laid down by existing decisions or rulings of the Board. In 138 recorded instances and probably many others strikes and lockouts were averted or called off as a direct result of the Board's intervention."

DISPOSITION OF CASES

"The National War Labor Board functioned for 16 months. During this time 1,261 separate controversies were presented to it for decision. Of this number 199 were submitted by both parties to the dispute. In 1,052 cases one party refused to join in the submission. Awards or recommendations were made in 490, or 39 percent, of the cases submitted. In 34, or about 17 percent, of the cases jointly submitted the Board was unable to agree, and the disputes were submitted to umpires for decision. Cases submitted by one party only were never referred to an umpire, such practice being construed as equivalent to compulsory arbitration.

"Regular meetings of the full Board were held every other week, at which cases were assigned to the proper sections (of which there were six) and the recommendations of the sections of the Board were considered. In many cases, of course, the action of the full Board consisted merely in approving the decisions of the sections. With all simplification possible, however, the Board handled an almost incredible amount of work each month. An average of 78 cases per month were considered. Of this number an average of 31 cases resulted in awards. The cases in which awards were not made were either dismissed, referred, withdrawn, or remained undecided. In detail, the disposal of the cases was as follows:

Statement showing disposition of cases before the National War Labor Board

Awards and findings made	[1] 490
Dismissed	392
Referred	312
Undecided	[2] 53
Suspended	1
Total	1,251

[1] Not including 64 supplementary awards, etc., in cases in which action had already been taken.
[2] These 53 cases represent actually only 3 case-groups, as one of the case-groups involves 51 docket numbers.

"The greater number of cases dismissed were removed from the docket of the Board without prejudice because of lack of prosecution, or because the parties themselves entered into voluntary agreement, making formal action of the Board unnecessary. The reasons for removal and the number dismissed for each cause are as follows:

Number of cases dismissed for each specified cause

Lack of agreement	12
Lack of jurisdiction	93
Lack of prosecution	159
Voluntary settlement between parties	116
Withdrawal	12
Total	392

A. Right to Organize

The right of workers to organize in trade unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.

A similar right of employers to bargain collectively through chosen representatives without interference by workers was recognized and affirmed.

Employers should not discharge workers for membership in trade unions nor for legitimate trade-union activities.

Under this principle the National War Labor Board held in nine awards that employers are forbidden to discriminate against workers because of membership in the unions or for legitimate trade-union activities. Among the industries involved in these awards were oil refining, street railway, steel, and electrical appliance and equipment manufacturing.

In seven awards the Board ordered the reinstatement with back pay of employees discharged because of membership in unions and legitimate trade-union activity. The electric appliance and equipment manufacturing, railroad appliance, food products, iron and steel industries, among others, were involved in these cases.

In one case, involving the iron and steel industry, the Board forbade the blacklisting of union men. In two cases involving street railways it forbade employers to make individual contracts deterring their employees from joining unions. Peaceful participation in a strike was held not to be a bar to reemployment, in one award.

The following quotations illustrate the applications of this principle:

No employee shall be suspended, demoted, or dismissed because of trade-union membership or for legitimate trade-union activity.

In the event of its becoming necessary to decrease the force by a lay-off, seniority shall be given preference. The principle of seniority shall generally prevail as to all employees in their respective departments.

No employee shall be suspended, demoted, or dismissed without just and sufficient cause. If, after proper investigation, it is found that an employee has been disciplined unjustly, he shall be reinstated with all rights and full compensation for all time lost.

Employees attending union conventions or other duties affecting themselves shall, upon giving proper notice to the foreman or superintendent, be permitted to absent themselves without pay to attend to such duties. Upon their return such workers shall be reinstated into the service with all their former rights (*Corn Products Refining Co.*, No. 130, 11–21–18).

The representatives of the War Labor Board have agreed that, in accordance with the principles of the National War Labor Board, the right of employees to bargain collectively is recognized and is guaranteed to the workers of Bridgeport. This recognition admits that we have passed from the day of the individual to the day of the group and that the will of the group should have precedence over the will of the individual (*Employees* v. *Employers in Munition and Related Trades, Bridgeport, Conn.*, No. 132, 8–28–18).

The company is under no obligation to recognize the union, but it should not interfere with the right of its workers to organize in a union, and the company should permit the organization of such workers and receive committees representing them as organized (*Columbus Ry., Power and Light Co.*, No. 146, 7–31–18).

The employers shall meet with a committee chosen by the workers and there shall be no discrimination for or against nonunion men. The rights of workers to organize in trade unions is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employer in any manner whatsoever. The workers, in the exercise of their right to organize, shall not use coercive measures of any kind to induce persons to join their organizations nor to induce their employers to bargain or deal therewith (*New York Central Iron Works, Hagerstown, Md.*, No. 297, 9–26–18).

With reference to the permit system, we deem it proper that the company should require the workman to obtain a permit to change employment from one mine to another mine of the same company; but we condemn any agreement, and any practice under it equivalent to blacklisting, if it exists, by which one company requires a permit from another before a man leaving the employment of one company shall be accepted by the other (*Sloss-Sheffield Steel & Iron Co.*, No. 12, 7–31–18).

That the company is hereby directed not to discriminate in any way against any clerical worker for legitimate union activity or because of participation in this complaint (*General Electric Co.*, No. 127, 11–22–18).

The following appears in many awards and recommendations:

There shall be no discrimination by the employer against employees for membership in a labor union, or for legitimate trade-union activities.

The company was not shown to have been guilty of discrimination resulting in discharge of employees for union affiliations since the issuance by the com-

pany of its circular of July 25 last, wherein the company offered discharged employees the machinery for appeal to an arbitrator and reinstatement if the arbitrator's ruling was adverse to the company. The company should continue its announced policy, which is in accordance with the principles of this board that the right of its employees to organize in trade unions shall not be denied or interfered with. The company should not abridge in any way the present right of appeal now granted discharged employees (*Employees Members of Brotherhood of Locomotive Engineers* v. *Pac. El. Ry. Co.*, No. 214 4–10–19).

That this provision of the President's proclamation was violated by the company, it would seem to us admits of no doubt. We are brought to this conclusion primarily by the admissions of the president of the company and other high officials as to their attitude of opposition to the men joining the unions chosen by them as most desirable for their welfare, by the espionage of the officials of the company in the neighborhood of the meeting place of the organization and elsewhere, by the fact that the dismissals were abnormally large in number during the two months when the issue as to the unions was acute, as compared with dismissals for years prior to that time, and finally by the showing that the men who exercised their right to join unions admittedly opposed by the officials of the company were charged with demerits which accumulatively brought about their discharge with such rapidity and under such circumstances, after their membership in unions was disclosed, as to lead us to the conclusion that dismissals in a large number of cases were caused by their legitimate union activities and not on account of inefficient service or improper conduct, the reasons assigned by the company for the dismissals (*Brotherhood of Locomotive Engineers* v. *N. Y. Cen. R. R. Co.*, No. 283, 10–24–18).

The right of the workers of this company freely to organize in trade unions, or to join the same, and to bargain collectively, is affirmed, and discharges for legitimate union activities, interrogation of workers by officials as to their union affiliations, espionage by agents or representatives of the company, visits by officials of the company to the neighborhood of the meeting place of the organization for the purpose of observing the men who belong to such unions, to their detriment as employees of the company, and like actions, the intent of which is to discourage and prevent men from exercising this right of organization, must be deemed an interference with their rights as laid down in the principles of the board (*Brotherhood of Locomotive Engineers* v. *N. Y. Cen. R. R. Co.*, No. 283, 10–24–18).

There is considerable evidence in this case tending to support a contention of the men that employees had been discharged on account of trade-union membership, and this is especially so in the case of a number of molders who were discharged on or about the 14th day of December 1918. It is also asserted that witnesses who testified for complainants in this case have since been discharged because of that fact. It is decided that these cases may, if the finding is otherwise accepted by the company, be brought before the examiner hereinafter provided for to act as administrator, who shall hear all the testimony relating thereto, and whose decision thereon shall be final, subject, however, to appeal to the National War Labor Board by either party (*Local No. 459, International Assn. of Machinists* v. *Am. Hoist & Derrick Co.*, No. 571, 4–11–19).

REINSTATEMENT OF DISCHARGED EMPLOYEES

The electricians discharged June 13, 1918, shall be reinstated with back pay at the rate then being paid up to August 1, 1918, and thereafter at the rate fixed in this award, less the amount of the earnings of each such discharged employee since his dismissal (*Corn Products Refining Co.*, No. 130, 11–21–18).

The arbitrators are asked to pass upon the reinstatement of the following four men, discharged by the company on or about June 28, 1918: Karl R. Fenneman, William Hagans, F. W. Killian, and M. E. Reed. These four men should be reinstated in their former positions and rating with pay for all time lost by them on account of their discharge (*Columbus Ry., Power & Light Co.*, No. 146, 7–31–18).

In the *Smith and Wesson case*, No. 273, 8–21–18, a section of the Board, in accordance with the principles upon which the Board was founded, recommended that employees discharged for union mem-

bership "be restored to their former positions and paid for all time lost by them on account of their discharge."

In the *National Refining Co., Coffeyville, Kans., case*, No. 97, 8–28–18), it appeared that prior to May 21, 1918, several unions had an agreement with the company, signed by the superintendent. As the result of the company's repudiation of this agreement the workers went out on a strike on that date. After failure of conciliation the unions submitted a complaint to the Board, stating that the men were willing to return to work, but that their jobs had been filled. In its award a section of the Board held:

> We realize the difficulty of returning each man to his former position, but the company will receive applications from, and first consider and return to work, former employees if found desirable and competent; it being agreed that membership in a union or participation in strike shall not be a bar to reemployment.
>
> When charges of discrimination are made to the examiner he shall immediately institute an investigation, and if the charges are sustained he shall immediately reinstate the employee who has been discriminated against and order payments to be made to him for lost time. Pending appeal to the local board the employee shall remain at work (interpretation of Bridgeport award, No. 132, 9–23–18).
>
> Two of these men, T. A. Redd and T. L. McBrayer, should be reinstated to their former positions with full seniority rights and with full pay for all time lost by them on account of their discharge, less earnings during the interim. With regard to the other five men we recommend that the company be not required to reinstate these men, as it is perfectly clear that they are incompetent and inefficient, and with regard to R. P. Newman it is not at all clear from the testimony that he was discharged (*Employee Members of Div. No. 732, Amalgamated Assn. of St. and Electric Ry. Employees of Am.* v. *Georgia Ry. & Power Co.*, No. 159, 12–5–18).
>
> The right of the workers to organize in trade unions and bargain collectively through a chosen representative is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employer in any manner whatsoever.
>
> (*a*) That Leslie Taylor, Joseph Glassett, John J. Kerivan, James Hanson, John J. Connolly, Edwin Hurch, Herbert Pogson, Rufus Hartley, Walter Putnam, Raymond Shattuck, and Arthur E. Clark shall be reinstated in their employment at the same jobs, or work of similar nature to that which each was doing when dismissed, at rates of pay not less than each was then receiving nor less than the rate established for the work upon which each is reemployed, plus any increases which such work may receive under the terms of this award, without loss of seniority rating or bonuses, and with pay for all time lost by reason of dismissal, minus amount, if any, of intervening earnings. Such reemployment by the company shall be dependent upon each employee presenting himself to the company within 5 days after the receipt of this award by the parties to the case (*Employees* v. *General Electric Co.*, No. 231, 10–24–18).
>
> We therefore recommend, as the only just basis for a proper settlement of this controversy, that the New York Consolidated Railroad Co. reinstate to their positions the following employees whom we find to have been dismissed primarily because of legitimate union activities, with full pay for all time lost from the dates of their several dismissals, minus any intervening earnings in other employments (*Brotherhood of Locomotives Engineers* v. *N. Y. Cen. R. R. Co.*, No. 283, 10–24–18). (See quotations from same award under heading "Right to Organize.")
>
> The evidence shows that a few days after the organization of a union, the president, the secretary, and the treasurer of the union were discharged. We recommend, therefore, that the representative committees herein provided give consideration to each case of discharge on its merits. If good and sufficient cause other than union membership and union activity cannot be shown for the dismissal of these three employees, we recommend their reinstatement wihout prejudice and without demotion at the earliest opportunity (*Billman et al.* v. *Williamsport Wire Rope Co.*, No. 818, 3–5–19.).

B. Collective Bargaining

In 12 awards the Board held that workers have the right to organize for collective bargaining through their chosen representatives. It repeatedly ruled that it is the duty of employers to recognize and deal with committees after they have been constituted by the employees. In at least 110 of the awards and recommendations of the Board the following clause appears:

> As the right of workers to bargain collectively through committees has been recognized by the Board, the company shall recognize and deal with such committees after they have been constituted by the employees.

The following appears in many awards and recommendations:

> The right of workers to organize into trade unions, and to bargain collectively through their chosen representatives, is recognized and affirmed. The workers shall have free choice in the selection of committees to represent them, and the employer shall meet with committees of his own employees for the purpose of adjusting any grievances that may arise.

The following quotations illustrate applications of the principle of organization for collective bargaining:

> The practice of the company in times past to take restrictive personal contracts such as were shown to the section, even if lawful when made, is contrary to the principles of the National War Labor Board, and the practice of taking such contracts should be discontinued for the period of the war. (*Smith & Wesson Arms Co.*, No. 273, 8–21–18).
>
> The absence of any method of collective bargaining between the management and the employees is another serious cause of unrest (*Bethlehem Steel Co.*, No. 22, 7–31–18).

In this case the Board directed that an election be held to elect committeemen, by departments, to department and shop committees and a general committee. With meticulous detail, a plan of collective bargaining was set forth in the award. It provided for the election of committees, the qualifications for voters and committeemen, an election procedure, and a method of adjusting disputes.

In a statement to the workers of the company the Board stated as follows:

PURPOSES OF THE AWARD

1. To give the employees a direct voice in determining their working conditions.
2. To provide a method of mutual bargaining between the company and the chosen representatives of shop and craft groups.
3. To provide ready means for conferences between employees and management on all matters affecting common interests.
4. To provide an agency for the prompt adjustment of all differences that may arise between the employees and the management, either groups or individuals.
5. To furnish an agency for working out the classification of employees, hourly wage, and piece work rates and "entire revision or elimination" of the present bonus system.

* * * * * * *

The right of employees to belong to labor unions is distinctly recognized in the award and discrimination by the management against union employees expressly prohibited. Nor shall any employee be subject to discrimination on account of his acts as a shop or other group representative.

The practice of the company in times past to take restrictive personal contracts, such as were shown to the arbitrators, if continued, would be contrary to the principles of the National War Labor Board. However, the counsel for the company states to the arbitrators that this practice has been abandoned

and calls for no further action by the arbitrators (*Omaha & Council Bluffs Street Railway Co.*, No. 154, 7–31–18).

We find upon consideration that the company's contention that the men have always been able to discuss grievances as individuals and that no system of collective bargaining is necessary for their welfare is wrong in fact and in principle, nor do the division meetings held by the men, which were advocated by the company as an adequate plan of collective bargaining, constitute an ideal or even a proper means of free and unhampered discussion by the men of their grievances and their presentation of same to the company for adjustment. We recommend that the company carry out the principle of this Board which gives to the employees the right to meet and treat through their own committees with the officials of the company in regard to wages, working conditions, and other matters affecting the interest of the workers. The company should meet and treat with such committees of employees regardless of the fact that they are elected at a meeting of the employees who are members of the union (*Employees Members of Brotherhood of Locomotive Engineers and Brotherhood of Railroad Trainmen* v. *Pacific Electric Railway Co.*, No. 214, 4–10–19).

The practice of the company in times past to take restrictive personal contracts such as were introduced in evidence, if continued, would be contrary to the principles of the National War Labor Board. However, the counsel for the company states that this practice has been abandoned, except that such contracts are tendered to new employees. This practice likewise should be discontinued, as it is not consistent with the principles of the Board (*Employees Members of Div. 689, Amalgamated Assn. of St. & B. Ry. Employees of America* v. *Wash. Ry. & El. Co.*, No. 1049, 3–25–19).

C. Company Dominated Unions

The Board on several occasions considered this phase of employer interference with the right of workers to organize and bargain collectively through representatives of their own choosing. In the *New York Consolidated Railroad Co. case*, *supra*, the company sought to avoid the charge of denying its employees the right to bargain collectively by pointing out that it did not oppose membership in the Brooklyn Rapid Transit Employees' Benefit Association. The employees claimed that this association was under the control of the company. The Board discounted the argument of the company, saying:

> The form of the benefit association seems to have been changed from time to time, but one feature which has persisted is that the president of the company has appointed the president of the association, and the president of the association has either himself conducted the elections or appointed persons to do so. It is claimed that this has never resulted in a suggestion of unfairness, but where the issue is acute and a company-formed association is offered as a substitute for an association of the voluntary formation of the men, the slightest suspicion of an opportunity for unfairness on the part of employer is itself a reason for questioning the usefulness of such an organization.
>
> Without further discussion of the merits of this last-named association, it is easy to see why it is not regarded by a considerable portion of the men as a satisfactory medium for their collective action; and under the principle hereinbefore set forth the men are free to join such organization as they may select themselves and to appoint such persons as their representatives whom they may regard as most suitable to them. Following the section of the proclaimed principles of the board above set forth, it must be ruled that the employees of the company who desire to become members of the Brotherhood of Locomotive Engineers, or any other legitimate labor organization, shall be permitted to do so without denial, abridgment, or interference upon the part of the company.

And again, in the *San Diego Electric Railway Co. case*, No. 452, April 10, 1919, the Board said:

> We find, upon consideration, that the company's plan of collective bargaining through a committee primarily constituted and appointed by the company for

the purpose of holding and disbursing a fund for paying claims against the company occasioned by accident, does not meet the requirements of this board with regard to collective bargaining, and does not constitute such a plan of collective bargaining as the men are entitled to.

In three awards involving the Standard Wheel Co., Corn Products Refining Co., and Midvale Steel and Ordnance Co., the Board ruled that the employer may not compel employees to join a beneficial or welfare organization conducted by the company.

D. Elections

In several cases (*General Electric Co.*, No. 18, 7–31–18; *Bethlehem Steel Co.*, No. 23, 7–31–18; *Smith & Wesson*, No. 273, 8–21–18) the Board provided for the holding of an election of department committees by the workers in some convenient public building and provided that its examiner should conduct the election. In a later award (*Saginaw Machinists*, No. 147, 10–25–18), it provided for the holding of the election "in the place where the largest total vote of the men can be secured consistent with fairness of count and full and free expression of choice." In two other awards (*E. F. Sturtevant Co.*, No. 393, 1–30–19; *Midvale Steel & Ordnance Co.*, No. 129, 2–11–19) the Board provided for elections by secret ballot.

On October 4, 1918, the joint chairman approved a plan for the election of shop committees which provided for the selection of one committeeman for each 100 employees in each department or section of the shop, for the nomination of candidates, for the holding of elections in the shop or some convenient public building, the election to be conducted under the supervision of the examiner in charge. Elections were to be held by secret ballot under this plan and foremen and other officials of the company were to absent themselves from the election.

This plan was not followed literally in all awards but was adapted to meet the circumstances of each case. The following quotations illustrate applications of the formula:

> Under the principles quoted in the preceding section, the workers have the right to "bargain collectively through chosen representatives." In accordance with these principles we recommend the following:
>
> (*a*) Election of committees: The election by the workers of their representative department committees to present grievances and mediate with the company shall be held, during the life of this award, in some convenient public building in the neighborhood of the plant, to be selected by the examiner of this Board assigned to supervise the execution of this award, or, in case of his absence, by some impartial person, a resident of Springfield, Mass., to be selected by such examiner. Such examiner, or his substitute, shall preside over the first and all subsequent elections during the life of this award, and have the power to make the proper regulations to secure absolute fairness (*Smith & Wesson Arms Co.*, No. 273, 8–21–18).
>
> Committees consisting of three employees from each department shall be elected by secret ballot in such manner and place and under such conditions as the employees may determine, without influence or interference by the company or any of its superintendents or foremen, which committees after their election shall represent and be responsible to the employees of such departments in the presentation and adjustment of any grievances as to hours, wages, or working conditions.
>
> Such grievances as may arise shall first be presented for adjustment to the head of the department involved by the departmental committee concerned. If within five days thereafter the dispute is not adjusted, the departmental committee may refer the matter in dispute to a general plant committee, to consist of five employees elected by the members of the departmental com-

mittees, to be taken up by the general plant committee with a like committee of the company or other of the company's representatives for the purpose of bringing about a settlement. In the event that the general plant committee fails to bring about an agreement on disputed questions, the matter in dispute may be referred to the National War Labor Board or to such other agency as the company or its representative and the general plant committee may agree upon (*Corn Products Refining Co.*, No. 130, 11–21–18).

A shop committee including at least one woman is to be chosen by secret ballot only, with all men and women machinists eligible to vote. The shop committee shall have the power to bring any grievance before the company officials, and in the event that the committee and the company officials fail to bring about an agreement on disputed questions, the matter in dispute may be referred to the National War Labor Board or to such other agency as the company or its representatives and the committee may agree upon (*Machinists* v. *B. F. Sturtevant Co.*, No. 393, 1–30–19).

HISTORY OF FEDERAL INTERVENTION IN LABOR DISPUTES [31]

The National Labor Relations Board is not a novel venture. Nor is the act that created it a hypothetical conception. On the contrary this Board is an outgrowth of the extensive experience of the Government in intervention in labor relations, and particularly in labor disputes. Even before the World War the Federal Government found it necessary to enact legislation for the handling of labor disputes in the railroad industry, as is described elsewhere in this brief.

Although the Federal Government did not intervene in labor relations outside of the railroad industry before the last war, it was nevertheless forced by circumstances to concern itself from time to time with the labor problem in industry at large. Usually it was during periods of extraordinary labor unrest, dating back to the 1870's, which mark the period when the factory system began to supersede the handicraft mode of production. As early as 1876 the Federal Government began to study labor conditions. Then followed a notable report of the Senate Committee on Labor and Education in 1885. Another special study of labor conditions was made by a temporary industrial commission in its report to Congress in 1898. And just before the war acute labor unrest prompted the creation of another temporary Commission on Industrial Relations, which again studied the field and reported to Congress in 1915. All these Commissions made recommendation for Federal and State legislation rectifying various undesirable labor conditions.

With the outbreak of the World War in Europe the labor situation tended to become increasingly aggravating. Consequently, even before the United States entered the World War, economic conditions impelled the Federal Government to interest itself in labor matters through a Council of National Defense. Numerous committees were appointed to handle various phases of the labor problem. Among these agencies was the creation in August 1917 of a Labor Adjustment Board entrusted with the responsibility of handling labor disputes, and authorized to create subordinate units to act on its behalf. Special labor boards were also created in different branches and departments of the Government. (Professor Gordon S. Watkins, Labor Problems and Labor Administration During the World War, University of Illinois Studies in the Social Sciences, vol. VIII, No. 3;

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[31] Board's exhibit 52 (R. 781); see supra, p. 33.

U. S. Bureau of Labor Statistics, Bulletin No. 287, National War Labor Board, ch. III.)

"In the autumn of 1917 it became apparent that the Government's method of dealing with labor problems arising in connection with war activities was unsatisfactory. * * * A unification of labor policy was the logical initial step in bringing about the necessary industrial stability." On the basis of conferences of the interested parties a War Labor Conference Board was created. This body expounded a set of principles and policies to govern industrial relations during the war. It also recommended the creation of a National War Labor Board to interpret and apply these principles and policies.

THE WORK OF THE NATIONAL WAR LABOR BOARD

"The National War Labor Board served as an industrial supreme court for the period of the war. The principal object in its creation was the removal of the causes of interrupted production by providing a means by which parties to controversies might continue their industrial efforts in the knowledge that their differences would be adjudicated fairly and honestly on the basis of principles formulated by both sides and guaranteeing fundamental justice to both sides. To a great extent this object was realized. The Board played a large part in the stabilization of industrial relationships to the end that war production of the country was not only maintained but increased to the maximum in the history of the country. Furthermore, it did much to educate employers, employees, and the public in regard to some of the fundamental aspects of industrial relationships" ibid, p. 19).

EXTENT OF THE BOARD'S WORK

"The awards and findings of the Board for which information is available directly affected more than 1,100 establishments, employing approximately 711,500 persons, of whom about 90,500 were employees of street railways. These numbers include only those persons who were specified directly in the terms of the decisions. The influence of the Board's decisions, however, was vastly wider than these numbers indicate. In many cases the decision was applied in practice to other employees of a plant than those in whose names the controversy was filed, and very frequently a decision in regard to one company was accepted by other companies similarly situated. There was a growing inclination on the part of employers voluntarily to adjust hours and working conditions in conformity with the decisions already rendered by the Board. In many instances controversies were settled by other adjustment agencies in accordance with the principles laid down by existing decisions or rulings of the Board. In 138 recorded instances and probably many others strikes and lockouts were averted or called off as a direct result of the Board's intervention" (ibid, p. 19).

DISPOSITION OF CASES

"The National War Labor Board functioned for 16 months. During this time 1,251 separate controversies were presented to it for decision. Of this number, 199 were submitted by both parties to the dispute. In 1,052 cases, one party refused to join in the submission.

Awards or recommendations were made in 490, or 39 percent, of the cases submitted. In 34, or about 17 percent, of the cases jointly submitted the Board was unable to agree, and the disputes were submitted to umpires for decision. Cases submitted by one party only were never referred to an umpire, such practice being construed as equivalent to compulsory arbitration.

"Regular meetings of the full Board were held every other week, at which cases were assigned to the proper sections (of which there were six) and the recommendations of the sections of the Board were considered. In many cases, of course, the action of the full Board consisted merely in approving the decisions of the sections. With all simplification possible, however, the Board handled an almost incredible amount of work each month. An average of 78 cases per month were considered. Of this number an average of 31 cases resulted in awards. The cases in which awards were not made were either dismissed, referred, withdrawn, or remained undecided. In detail, the disposal of the cases was as follows:

Statement showing disposition of cases before the National War Labor Board

Awards and findings made	[1] 490
Dismissed	392
Referred	315
Undecided	[2] 53
Suspended	1
Total	1,251

[1] Not including 64 supplementary awards, etc., in cases in which action had already been taken.

[2] These 53 cases represent actually only 3 case-groups, as one of the case-groups involves 51 docket numbers.

"The greater number of cases dismissed were removed from the docket of the board without prejudice because of lack of prosecution, or because the parties themselves entered into voluntary agreement, making formal action of the board unnecessary. The reasons for removal and the number dismissed for each cause are as follows:

Number of cases dismissed for each specified cause

Lack of agreement	12
Lack of jurisdiction	93
Lack of prosecution	159
Voluntary settlement between parties	116
Withdrawal	12
Total	392

(Ibid, p. 20.)

Awards of Board

CHARACTER OF AWARDS

"The character of the Board's awards and findings and its interpretation of the principles laid down for its guidance are set forth in detail in the analysis and summary of the Board's awards published on pages 52 to 115 following. It will be sufficient here to call attention to the two determinations of the Board which were probably most far reaching: (1) Bargaining relationships between em-

ployers and employees, whether organized or unorganized; and (2) the establishment of the principle of the living wage in industry.

"The first principle of the Board's industrial code (p. 32) recognized the right of workers to organize in trade-unions and to bargain collectively. This principle was involved in more than 150 disputes brought before the Board. In some cases in which the question of collective bargaining was not involved in the original dispute, the Board directed the establishment of such a system of collective bargaining as a method of adjusting the dispute in hand and future controversies. A total of 226 of the Board's awards provided for collective bargaining with employees either through unions in those shops which had been organized before the establishment of the Board, or through shop or departmental committees in shops which had not previously been organized. Several awards specified the method of electing shop committees and assigned to them various duties, such as working out of wage scales and piece-work rates, discharges, and sanitary conditions.

"The 'principles and investigations and decisions of the Board in regard to the minimum wage went far toward establishing that principle as an actuality in this country.' In its determination of what should constitute a living wage the Board did not reach a final decision, however. On July 11, 1918, the following announcement was made:

> "The Board hereby announces that it has now under consideration the matter of determination of the living wage which will permit the worker and his family to subsist in reasonable health and comfort. That in respect to the minimum established by this finding (Docket No. 40) it shall be understood that it shall be subject to readjustment to conform to the Board's decision when and as a determination shall be reached in that regard.

"The minutes of the Board's meetings show a further consideration of the matter and the adoption of a resolution on July 31, 1918, providing 'that for the present the Board or its sections should consider and decide each case involving these principles on its particular facts and reserve any definite rule of decision until its judgments have been sufficiently numerous and their operation sufficiently clear to make generaization safe.' No further decision was reached" (ibid., p. 23).

ADMINISTRATION OF AWARDS

"The National War Labor Board early adopted the principle of retaining jurisdiction for the purpose of helping both parties to put the award into effect. Such a policy was found necessary and desirable, in spite of the desire of the Board to encourage to the greatest possible extent the administration of its decisions by the parties concerned.

"In practice it was found that even the best drawn awards frequently left room for divergent interpretations. If the differences were small, adjustment could be made by correspondence, but in case of major differences the sending of an examiner as an interpreter and administrator proved to be the only alternative to having the parties bring their difficulties direct to the Board.

"A total of 180 awards and findings, including 71 street railway cases, were administered by the department of administration. In the 71 street railway awards a total of 142 separate points were ruled

upon by the administrators, as many as 15 points coming up in connection with a single award" (ibid., p. 25).

SHOP COMMITTEES

"Among the cases in which the chief difficulties were encountered were those in which the award provided for collective bargaining in a plant where such a system had not previously existed. Often the parties in such cases were completely at a loss as to how to begin such a system and imperatively needed counsel with some one familiar with the processes of installing shop-committee systems. Administrators were sometimes obliged to spend months building up systems of representation of workers so that there might be proper persons with whom to deal on behalf of the employees. This was not true of street railways, where there was usually a strongly organized international union already in contractual relations with the railroad companies, but it was conspicuously true of certain industrial establishments, such as those concerned in the Bridgeport case, where over 60 establishments, employing 60,000 workers, largely unorganized, were involved. The award in this case provided for a local board of mediation and conciliation. The formation of such a board necessitated the setting up of elaborate machinery for the institution of collective bargaining between the company and its employees. To meet this emergency the Board formulated and instituted here a shop-committee plan. This plan provided for the election of departmental and general committees of employees. The powers, functions, and methods of procedure of these committees were defined. Provisions were made for a referendum and recall of elected committeemen and for amendment of the bylaws. This plan, modified to meet conditions in particular cases, was instituted later in a number of cases. No invariable rule was laid down for all cases, the composition of the committee, its duties, and the method of its election being left so far as possible to the agreement of the parties. Specific action of the board in such cases is indicated in the summary of the Board's awards" (ibid., pp. 25 to 26).

It will thus be seen that the National War Labor Board had jurisdiction not only in the establishment of the workers' right to self-organization and collective bargaining but also over the determination of wages and other working conditions.

Depression of 1929 and Extraordinary Industrial Unrest Revive Government Intervention

The experience of the Government in the past and particularly in the railroad industry and during the World War not only set a precedent, but served as a basis for future Government intervention in labor relations. Hence when the long and fateful depression which began in 1929 brought in its wake industrial unrest, the Federal Government again took a hand in industrial relations with a view to minimizing the unrest. The agencies which the Government created and the results they achieved are described below. In addition to being a history of accomplishments during a trying period, it is also a history of experimentation and empirical adaptation, culminating in a workable and satisfactory labor relations act creating the present National Labor Relations Board.

NATIONAL LABOR BOARD

When the N. R. A. was founded no provision was made for handling industrial disputes. But soon an avalanche of labor disputes descended upon the industrial order which particularly menaced the President's reemployment agreements. Out of the labor unrest and desire for the uninterrupted flow of commerce was born on August 5, 1933, the National Labor Board. It resembled the War Labor Board, and its jurisdiction was gradually extended to industrial disputes under the codes (announcement of the National Recovery Administration, Aug. 5, 1933; Executive Order No. 6, 612–A, Feb. 23, 1934).

At the outset the Board's efforts were highly successful. Much of its work was of such a nature that it does not lend itself to quantitative measurement. As far as possible the Board attempted through informal conferences and conversations to adjust differences between employers and employees. Also, unfortunately in the press of work its statistics were neglected. Bearing these factors in mind, we present herewith the statistics issued by the Board indicating its accomplishments. From its inception up to July 1, 1934, the National Labor Board and its regional subdivisions assumed jurisdiction over 4,277 cases involving over 2,000,000 workers. Its records indicate that about 83 percent of the cases were settled, and that two-thirds were adjusted by agreement. The Board also mediated 1,496 strikes involving over a million workers, and its records reveal that three-fourths of the cases were settled. The Board estimates that 1,800,000 workers benefited directly from its intervention (N. R. A. Release No. 6295, July 7, 1934).

In its authoritative study of the Brookings Institution, the two eminent scholars who prepared it evaluate the work of the National Labor Board as follows:

> To summarize, the National Labor Board and its regional boards were an important factor in composing labor disputes and provided a mechanism—lacking in all but a few of the codes of fair competition—for regulating industrial relations. The fact that there existed an instrument for bringing employers and employees together to work out agreements; and the further fact that this instrument was highly publicized and had some prestige, brought about settlements in many controversies where agreement would not have been reached otherwise. As a rule, the Board's adjustment formulas were far more successful when expressed in a mutual "agreement" than when prescribed by a "decision." The Board's decisions, however, even in the absence of enforcement, helped to clarify the issues involved in the problem of collective bargaining. These decisions thus posited many of the questions that must be answered if a rational process of settling industrial disputes is to be set up in the United States. (See *Labor Relations Boards*, by Lewis L. Lorwin and Arthur Wubnig, p. 222.)

SHORTCOMINGS OF N. L. B.

Because the National Labor Board was an emergency agency with a revolving board and because it had no independent powers of enforcement, its authority began to wane. Since labor unrest commenced to increase, it was found necessary to replace the National Labor Board by some other agency.

NATIONAL LABOR RELATIONS BOARD AND INDUSTRIAL RELATIONS BOARDS

On March 1, 1934, a bill was introduced creating a National Labor Relations Board that would replace the National Labor Board. Due to differences of opinion and delay it was replaced by Public Resolution No. 44, enacted on June 16 and signed by the President on June 19. Under this resolution the President was authorized to create a board or boards to handle labor relations. The code authorities also had power to establish agencies to handle labor matters. Based either on the authority of Public Resolution No. 44 or the power vested in code authorities to establish agencies for adjusting labor matters, a network of labor and industrial relations boards sprang into existence. The relationship of these agencies to each other was not clear, so that there was confusion and misunderstanding.

NATIONAL LABOR RELATIONS BOARD

Under Resolution No. 44 the President created the National Labor Relations Board on June 29, 1934, as the successor to the National Labor Board covering the field in general. This Board functioned until July 1, 1935, when it was replaced by the present National Labor Relations Board.

PROCEDURE

The first National Labor Relations Board described its procedure as follows:

The National Labor Relations Board's 202 opinions are collected in two printed pamphlets.[32] It has been our belief that we should "pass authoritatively upon each unsettled case as it arises" (see first monthly report), and so build up a body of labor law from particular cases before us. This we have done. In our report covering the first 6 months of operation we stated that we had "sought to develop a body of decisions in harmony with the language of the statute", and briefly summarized some of the principles of our decisions on collective bargaining, majority rule, elections, company unions, and discrimination. Since then new interpretations of section 7 (a) have been added to this body of law. We held that the section did not apply to uncoded industries; that the employer's obligation to bargain collectively did not cease when his employees went out on strike; that an offer to deal with a joint council of unions as a committee of individuals representing the employees, but not the unions, was not collective bargaining with the duly chosen representatives of the employees, since it ignored the unions who in fact represented the men; that it was a violation of the section for an employer to discriminate on grounds of union activity against employees willing to return to work after a strike, whether or not the strike had been caused by a violation of section 7 (a). (See final report of the National Labor Relations Board, July 9, 1934, to Aug. 27, 1935, pt. III, Decisions, p. 9.)

ELECTIONS

Since the Board's prime function was to apply section 7 (a) it is of interest to reproduce the following excerpt describing procedure and outcome of elections:

In our report covering the first 6 months of operations we stated: "The Board believes that the device of elections in a democratic society has, among other

[32] Its predecessor, the National Labor Board, handed down 258 decisions, printed in two pamphlets.

virtues, that of allaying strife, not provoking it. An election is merely a device for determining as a matter of fact who are the representatives of the majority of the employees in the particular unit. Therefore, where there are contending factions of employees, or a substantial number of employees in any particular unit calling for an election, this should, in most cases, constitute "grounds for holding that the public interest requires it."

The device of holding an election to determine who represented the employees came as a suggestion of the National Labor Board in a case where an employer doubted whether the union represented a majority of his employees. As we have stated, that Board was finally given specific authority to hold elections; and the National Labor Relations Board received the added power to subpena pay rolls for the purpose of determining eligibility to vote. But the power to order and conduct elections given by Public Resolution 44 has been substantially nullified, because the employer was specifically permitted, under the resolution, to have the order reviewed in the Circuit Courts of Appeals. One hundred and fifty-two elections have been held by the regional boards by consent, and two under orders of the National Board. But, with the exception of these two cases, in every case where the employer did not consent to the holding of the election, and the Board ordered an election, the employer succeeded in tying up the enforcement of the order almost indefinitely in the courts. This procedure is unlike the practice followed under the Railway Labor Act, where elections are held without the employer being a party to the proceeding or having any standing to object to the order.

We have analyzed the results of the elections held during the period covered by this report. The National Board conducted elections through the agency of the regional boards. In many cases one election covered several separate units. In the total elections there were 579 units involved. Of these the trade unions won 337, or 58.2 percent; the employee representation plans and company unions won 169 units, or 29.2 percent; and no representation was chosen in the other 73 units, representing 12.6 percent. In terms of votes, 26,478 votes, or 58.5 percent of the total, were cast for the trade unions; 15,000, or 33.2 percent, were cast for employee representation plans and company unions; and 3,749, or 8.3 percent, were cast for some other form of representation, or for no representation. Fifty-six thousand eight hundred and fourteen employees were eligible to vote.

Insofar as possible we followed the subsequent results of these elections to see in how many cases collective bargaining was achieved as the result of a representative of the workers having been designated for that purpose. In 306 units the company recognized the elected representatives; and in 295 units bargained with them. In 225 instances, written agreements resulted, and in 259 none had been written. In 278 units, however, harmonious results, even though not expressed in written agreements, were achieved. (See final report of the National Labor Relations Board, July 9, 1934, to Aug. 27, 1935, pt. VI, Elections, pp. 13 to 15.)

CASES DECIDED BY THE BOARD AND ITS SUBDIVISIONS

In its final report the Board describes what happened to the cases that came under its jurisdiction:

Of the 202 decisions handed down by the National Board during the 11-month period, no violations were found in 39 cases, 5 were arbitration awards, and in 158 cases compliance was directed. Compliance was obtained in 46 cases. The Blue Eagle was removed in 46 cases. When the *Schechter* decision was handed down by the Supreme Court, 62 cases were pending but undecided. No decision was handed down in any of these pending cases, on account of the *Schechter* decision.

ACTIVITIES OF REGIONAL BOARDS

During the period covered by this report 9,364 cases were handled by the regional boards, involving 2,154,468 workers. Five thousand one hundred and seven cases have been closed—1,899 by agreement, 852 by decision, and 2,356 in some other way. Of the total cases handled, 1,019 involved actual or threatened strikes, and 563,503 workers actually locked out, striking, or threat-

ening to strike. Seven hundred and three strikes were settled, involving 229,640 workers; and 605 strikes, involving 536,399 workers, were averted.[33]

As soon as the *Schechter* decision was handed down on May 27, 1935, all directors of regional boards were notified not to handle any more cases except in a mediatory capacity. (See final report of the National Labor Relations Board, July 9, 1934, to Aug. 27, 1935, parts IX and X, pp. 20 and 21.)

ENFORCEMENT

The National Labor Relations Board, like its predecessor the National Labor Board, encountered the snag of lack of proper enforcing power. It could recommend removal of the Blue Eagle to the N. R. A. Compliance Division, or it could refer the case to the Department of Justice for appropriate action. In its final report, page 18, the Board declared that "it is powerless to enforce its own decisions. In the ultimate analysis its 'findings' and 'orders' are nothing more than recommendations. * * * Court enforcement under the present machinery is slow, uncertain and cumbersome. * * * This inevitable delay has been increased by much litigation arising from uncertainty as to the meaning of section 7 (a)."

INDUSTRIAL RELATIONS BOARD

The network of the industrial relations boards that were created either under Public Resolution No. 44, or by individual code authorities, numbered 22 in February 1935. Some of these boards had jurisdiction only over section 7 (a) cases, others only over labor complaints arising under the code, and some had jurisdiction over both subjects (Report on an Inquiry into Industrial Relations Boards, The National Labor Relations Board, February 26, 1935). Following is a list of the boards giving their names which indicates the industries to which they belonged.

1. The Automobile Labor Board.
2. The National Bituminous Coal Labor Board.
3. The National Longshoremen's Board.
4. The National Steel Labor Relations Board.
5. The Newspaper Industrial Board.
6. The Petroleum Labor Policy Board.
7. The Industrial Relations Committee for the Shipbuilding and Shiprepairing Industry.
8. The Textile Labor Relations Board.
9. The Electrotyping and Stereotyping Industry Code Labor Board.
10. Industrial Relations Committee for the Lithographing Printing Industry.
11. The Photo-Engraving Industry Labor Board.
12. The Printing Ink Manufacturing Industrial Labor Board.
13. The Coat and Suit Industrial Relations Board.
14. Commercial Relief Printing (Zone 16) Labor Complaints Board.
15. Joint Industrial Relations Board for the Textile Print Roller Engraving Industry.

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[33] The system of reporting for the regional boards was not, at the beginning, uniform, so that these figures are not altogether accurate, but present, it is believed, a substantially fair picture.

16. Infants and Childrens' Wear Industry National Labor Complaints Committee.
17. Labor Complaints Committee in the Motion Picture Industry.
18. The Dress Code Authority Industrial Adjustment Agency.
19. The Cotton Garment Code Authority Labor Complaints Committee.
20. Men's Neckwear Industry Labor Complaints Committee.
21. Cigar Manufacturing Labor Complaint Board.
22. The Men's Clothing Code Authority.

Not all these Boards functioned with equal success since they were hurriedly set up. However, some of them have a record of substantial accomplishments.

Present National Labor Relations Board

Even had the court not declared the N. R. A. unconstitutional, the conglomerate set-up of labor relations boards would have required drastic reorganization, and it would have been necessary to have more specifically defined their duties and powers. While, as our summary reveals, the more important of these boards secured relatively satisfactory results, there were too many difficulties to overcome. Thus, the first National Labor Relations Board created under Public Resolution No. 44, encountered the same difficulties that its predecessor—the National Labor Board. Its jurisdiction was not clearly defined; the unfair labor practices, the use of which it was to eliminate were not enumerated so that section 7 (a) was variously interpreted, its enforcement powers were cumbersome, if not practically unwieldy. Added to these difficulties was the maze of industrial relations boards often with overlapping and confusing jurisdictions. Some of these boards by attempting to act independently of the National Labor Relations Board usually worked at cross purposes. The system of labor boards thus became top heavy and would have collapsed of its own weight.

However, since public opinion and Congress felt that labor conditions demanded a governmental agency that would apply a minimum of legal sanctions in order to eliminate specific unfair practices so that genuine collective bargaining between employers and employees could proceed unhampered, legislation was enacted creating the present National Labor Relations Board. The difference, therefore, between the present National Labor Relations Board and the previous Government labor relations boards, are as follows: It is a statutorily created body, whereas the others were established through Executive orders or by code authorities. It has specifically defined duties and powers. The unfair labor practices which are forbidden are specifically stipulated. Its powers of enforcement are clearly defined as operating through review by the courts on the basis of its findings.

In contrast with a number of the earlier labor relations boards the present Board has no power to dictate the nature of the contract governing the labor relationship by stipulating the wages that are to be paid, the hours that are to be worked, or the character of other working conditions which employers must grant and which employees must accept. The present Board has only negative powers based

on a minimum of legal sanctions. Its duties consist primarily of aiding in the creation of a labor situation where there is a relative equality of bargaining between employers and employees so that they can arrive at a fair bargain on wages, hours, and other working conditions that go to make up the wage contract.

ACCOMPLISHMENTS

Notwithstanding the sentiment pervading business elements that new legislation should be defied until its constitutionality is determined, and the indiscriminate issuance of injunctions by a number of the lower Federal courts tying up the activities of the Board in their jurisdiction, the present National Labor Relations Board has achieved considerable success. This unfair attitude of employers and problems presented by the intervention of the district courts is explained by the chairman of the Board as follows:

> Following the enactment of the National Labor Relations Act, widespread public notice has been given to opinions of various manufacturers' associations and groups of attorneys to the general effect that the said act is unconstitutional and wholly void. The result of this type of attack upon an enactment of the Congress of the United States has been to discourage employees and labor organizations from submitting labor disputes to the agents of the United States created by said act, to cause employers of labor to state that they have doubts as to whether or not they should comply with the provisions of said act in conducting their relationships with their employees, and to make practical administration of the law less effective than would be the case if constitutional doubts concerning the legislation might be resolved.
>
> Notwithstanding the setting up by the Congress in the said act of a complete administrative procedure in which alleged violations of the provisions of the act might be determined in the first instance, and notwithstanding the provisions in said act that such initial determinations might be fully reviewed and reversed, modified or affirmed by appropriate Circuit Court of Appeals of the United States, various employers have resorted to the district courts of the United States to obtain injunctions against the Board even proceeding to an initial hearing on the ground that the said act is unconstitutional either in whole or as applied to the particular employer. Attached hereto, marked "Exhibit B" and made a part hereof is a list of 10 such proceedings already undertaken in the several district courts of the United States and scattered throughout the entire length and breadth of the country. While the District Supreme Court for the District of Columbia has, in two of such cases, rejected the propriety of its assuming jurisdiction, in two other cases, one being in Michigan and the other in Wisconsin, the district courts have temporarily enjoined the Board even from inquiring into the facts of an alleged controversy until such time as there might be tried out more fully the constitutional issues raised by the complainants in those proceedings. The practical result is that in many districts throughout the United States, district courts, being without precedent and guidance of opinion by the appellate courts of the United States, and presumably being to some degree moved by the public questioning of the validity of the said act, are proceeding to enjoin the administration of the said act until its constitutionality may be established (Dec. 24, 1935 Release).

Notwithstanding the obstacles that the Board has encountered its records reveal surprising results:

> The cumulative figures up to date, including the month of January, show that the Board and its regional offices have acted in a total of 575 cases, involving 141,209 workers. Of these 575 cases, 261, or almost a half, involving 61,814 workers were closed, leaving 314 cases involving 79,395 workers, pending on February 1, 1936. Of these 261 cases, 84, or almost one-third, involving 8,551 workers were closed by agreement of the parties. Sixty-eight cases involving 17,804 workers were dismissed by the regional directors before any formal action was taken, and 85 cases involving 27,458 workers were withdrawn

by the petitioner before such action. Seventeen cases involving 7,108 workers were closed in some other way.

During the period 47 strike cases, involving 7,585 workers, were handled. Twenty-six, or more than half, were settled and 6,031 workers were reinstated after strikes or lockouts. In addition 25 threatened strikes, involving 11,425 workers, were averted through the Board's action. An additional 169 workers were reinstated after discriminatory discharges.

There were 17 elections held in which 5,381 valid votes were cast.

Of the total 575 cases which came before the Board and its regional offices, the main basis of the complaint in 212 cases, or almost two-fifths, was section 8 (3) charging discrimination of workers on the basis of their union affiliation or activties. And in 166 cases, or slightly under 30 percent, the main cause of complaint was based on section 8 (5) of the act, the failure of the employer to bargain collectively with the designated representatives of his employees. In 95 cases involving 53,519 employees, or more than one-third of the employees in all the cases brought, the complainants petitioned the Board to hold elections to determine the bargaining agencies of the employees. (Feb. 19, 1936, release.)

In an earlier release, January 31, 1936, the Board specifically described the meaning of its achievements. Thus the Board has been unusually successful in securing compliance through informal and preliminary procedure.

One hundred and seventy-five of the four hundred and sixty-six cases, involving 34,635 workers, were closed during that 3-month period. The disposition of these 175 cases illustrates the present ability of the Board to close more than one-third of the cases brought before it, doing so in most cases during the informal, preliminary stages, and in all cases to date before recourse was had to court procedure under the act.

It has similarly been successful in settling and averting strikes.

The Board's congressional mandate "to diminish the causes of labor disputes burdening or obstructing interstate commerce" has been followed successfully in the settlement of 17 strike cases, involving 4,876 workers, and in the averting of 21 threatened strikes involving 10,490 workers. In all of these cases there were charge of unfair labor practice on the part of the employer. Thus employers in a wide diversity of industries have benefited through the peaceful settlement of strikes, many of them of long standing, and involving the threat of large losses.

What Government intervention in labor disputes often does in creating an atmosphere of good will between employer and employees is illustrated by the following description:

A notable settlement, made January 23 and not included in the figures to December 31, brought peace in the 5-months-old strike at Fisher Flouring Mills, Seattle, after the company had made a settlement seem improbable by its use of the police and its paid newspaper advertisements stating an irreconcilable position. The company annually pays out $8,000,000 in wages to mill employees, bag makers, merchants, etc. The agreement to end the strike was brought about by Board intervention, under terms which places the company in conformity with the National Labor Relations Act. It is to be noted that the company's original disclaimer of interstate activity was laid aside when the Board's regional director finally brought the union and the company into peaceful conference on the practical realities.

DISCRIMINATION CASES

In 36 percent of the cases handled the main basis of the complaint was section 8 (3), charging discrimination of workers because of their union affiliation or activities. The number of employees reinstated by companies after successful Board intervention is usually only a light indication of the importance of the settlement. For example, the United Fruit Co. of New York, after a hearing conducted by the New York regional office, reinstated one employee—a meager result on the face of it, yet by this one reinstatement the entire labor relations policy of the company was reversed. The company

agreed to publish a notice stating that it will withdraw support from the company union, not interfere with employees in the exercise of their rights of self-organization, and will "leave to its employees the question of the manner in which they may take advantage of the rights granted them by the Wagner Act, and will respect their freely expressed decision." Byproducts of this settlement were an agreement of the United Fruit Steamship Co. to reemploy strikers, and an agreement by the United Fruit Co. to return 700 striking longshoremen under a written agreement.

Similarly, all over the country, the reinstatement of a few workers by employers has resulted in the peaceful solution of open hostilities or of threatened trouble. * * *

* * * * * * *

COMPANY-DOMINATED UNIONS DISSOLVED

Support to company unions has been withdrawn in several instances upon recommendation of the Board's regional offices. Examples are the abandonment by Everybody's Daily, a Polish press newspaper in Buffalo, of a company union it had fostered, and the signing of a new agreement with the Typographical Union; like action by the American Raincoat Co., of Baltimore, resulting in a written agreement with the International Ladies Garment Workers Union; and the highly important decisions of the Boeing Airplane Co., of Seattle, and the Hudson Motor Car Co. to withdraw publicly their support of company unions.

AGREEMENTS TO BARGAIN COLLECTIVELY

Refusals to bargain collectively, even after the employers seemed ready to go to any lengths in their opposition, have been turned into a willingness to enter written agreements after the Board has intervened with the machinery to accomplish that end. * * *

* * * * * * *

ELECTIONS CONDUCTED

In 72 of the 466 cases, involving 45,487 workers, the complainants petitioned the Board to hold elections to determine the bargaining agency of the employees. Some elections were held without formal procedure and by consent of all parties (Jan. 31, 1936, release).

Contrast this procedure in its effect in bringing employers and employees together with that during the labor dispute in the steel industry in 1919, which lasted over 13 weeks and involved over 350,000 workers. The following correspondence between officials of the United States Steel Corporation and of the unions representing the workers reveals that the chief issue was union recognition and that the refusal of the corporation to submit to an orderly determination of who represented the workers was the immediate cause that precipitated the strike.

Page 4. The following extracts of a letter written by Judge Gary to the committee of the American Federation of Labor, just prior to the 1919 steel strike, stated the attitude of the United States Steel Corporation toward collective bargaining very clearly:

"Gentlemen: Receipt of your communication of August 26 instant is acknowledged.

"We do not think that you are authorized to represent the sentiment of a majority of the employees of the United States Steel Corporation and its subsidiaries * * *.

"As heretofore publicly stated and repeated, our corporation and subsidiaries, although they do not combat labor unions as such, declined to discuss business with them. The corporation and its subsidiaries are opposed to the 'closed shop.' They stand for the 'open shop', which permits one to engage in any line of employment whether one does or does not belong to a labor union. This best promotes the welfare of both employees and employers. In view of the well-known attitude above expressed, the officers of the corporation decline to discuss with you, as representatives of a labor union, any matter relating to employees * * *.

In reply Mr. Fitzpatrick, Mr. Davis, Mr. Hannon, Mr. Evans, and Mr. Foster of the strike committee wrote:

"DEAR SIR: We have received your answer to our request for a conference on behalf of the employees of your corporation, and we understand the first paragraph of your answer to be an absolute refusal on the part of your corporation to concede to your employees the right of collective bargaining.

"You question the authority of our committee to represent the majority of your employees. The only way we can prove our authority is to put the strike vote into effect, and we sincerely hope you will not force a strike to prove this point.

"We asked for a conference for the purpose of arranging a meeting where the question of wages, hours, and conditions of employment, and collective bargaining might be discussed. Your answer is a flat refusal for such a conference, which raises the question, if accredited representatives of your employees and the international union affiliated with the American Federation of Labor, and the federation itself are denied a conference, what chance has the employee as such to secure any consideration of the views they entertain or the complaints they may be justified in making?

"We noted particularly your definition of the attitude of your corporation on the question of the open and closed shop and the positive declaration in refusing to meet representatives of union labor. These subjects are matters which might well be discussed in conference. There has not anything arisen between your corporation and the employees whom we represent in which the question of the closed shop has even been mooted.

"Surely reasonable men can find a common ground upon which we can all stand and prosper."

After exhaustive hearings in which more than 100 witnesses testified the committee concluded:

Page 11: "The underlying cause of the strike is the determination of the American Federation of Labor to organize the steel workers in opposition to the known and long-established policy of the steel industry against unionization * * *."

Other reasons are presented by the labor leaders and the laboring men who have gone on strike, such as—

"(*a*) the refusal of Mr. Gary to confer with the committee claiming to represent the employees * * *;

"(*b*) the denial of the right of the employees to be heard by their own representatives through spokesmen of their own choosing * * *;

"(*c*) the demand for the right of collective bargaining * * *;

"(*d*) the demand for the 8-hour day; and

"(*e*) twelve demands of organizers, as hereinbefore enumerated."

We think, however, that of the above factors, (*a*), (*b*), (*c*), and (*d*) are fundamental and that even men on strike did not consider (*e*) above a sufficient or important cause of the strike (66th Cong., 1st sess., S. Rpt. No. 289. Investigating strike in the steel industries (1919)).

REPORT ON THE PROTECTION OF THE WORKERS' RIGHT OF ASSOCIATION, COMMITTEE ON FREEDOM OF ASSOCIATION, INTERNATIONAL LABOUR OFFICE, 1935 [34]

I. POSITION OF THE PROBLEM.

It is clear from the terms of the resolution adopted by the conference,[35] "question of the workers' right of association in order to prevent the dismissal of, or imposition of unfair treatment on, workers on account of their joining or receiving help from trade unions", that the question under consideration is not so much the guaranteeing

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[34] Board's exhibit 53 (R. 783).

[35] The text of this resolution is as follows: "Whereas workers' trade-union right is incorporated in the preamble of part XIII of the peace treaty, and whereas a resolution concerning freedom of association was adopted by the fifteenth session (1931) of the International Labour Conference: The conference requests the governing body to consider the desirability of placing on the agenda of one of its early sessions the question of the workers' right of association in order to prevent the dismissal of, or imposition of unfair treatment on, workers on account of their joining or receiving help from trade unions."

of the right of association with regard to the public authorities as its guaranteeing with regard to the other partner to the contract of employment. The question will accordingly be studied exclusively from this point of view.

Infringements of the right of association may take various forms:

(1) They may result from a formal undertaking imposed on the worker by the contract of employment. This practice consists, of course, in making engagement or the retention of the post conditional on the worker's not belonging or ceasing to belong to a trade union.

(2) They may result from acts performed after engagement and intended to bring pressure to bear on workers who are members of trade unions, e. g., dismissal of workers who are members of trade unions, discrimination against workers who are members of trade unions, material or moral pressure.

(3) These two kinds of measure are obviously aimed rather at the individual worker than at the trade union as such; they tend, even if by indirect means, to keep the undertaking free from any kind of trade-union influence and more particularly to prevent the conclusion of collective agreements or to endanger the stability or continuance of any such agreements which have actually been concluded.

Such measures of individual pressure are therefore generally accompanied by measures directed against trade-unions, e. g., intervention of the employer in the formation, organization or working of trade-unions, creation and support of works unions supervised by the employer and intended to prevent the trade-unions from taking part in the collective regulation of conditions of labor, refusal to recognize trade-unions, etc.

These are, in brief, the principal measures intended to restrict the right of association, and directed either against individual workers or against trade-unions. The action taken by means of legislation to deal with the matter is outlined below.

II. Legislation.

Like the definition of what in practice constitutes an infringement of the right of association, the legal definition may take various forms. The matter may be dealt with either by the mere application of ordinary legal principles concerning the abuse of the right of dismissal, or by specific provisions included in the laws dealing with the individual contract of employment, collective agreements, conciliation and arbitration, and works councils, or by laws dealing expressly with the right of association.

As the office has published a detailed analysis of the question in its reports on freedom of association,[36] it will be sufficient here to summarize a few of the most characteristic laws which contain a precise legal definition, in the first place, of the notion of the infringement of the right of association of individual workers, and, in the second place, the notion of the infringement of the right of association of trade-unions.

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[36] Cf. Studies and Reports, series A (industrial relations), nos. 28, 29, 30, 31, and 32.

PROTECTION OF THE RIGHT OF ASSOCIATION OF INDIVIDUAL WORKERS

In all countries where the right of industrial association is recognized by law, infringement of the worker's right of association, whether in the form of dismissal or of differential treatment, is an abuse of that right, and consequently gives the worker to whom it has been applied a right to compensation.

In practice, however, the protection afforded by ordinary legal principles has often been found insufficient. Most countries have therefore formally prohibited the practices referred to above.

Two laws may be quoted by way of example as regards the contract prohibiting membership of a trade-union.

Under section 3 of the United States Federal Act of March 23, 1932, concerning industrial disputes, "any undertaking or promise * * * whether written or oral * * *, whereby (*a*) either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization, or of any employers' organization, or (*b*) either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation" in such a case, is declared "contrary to the public policy of the United States" and "shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court."

Section 4 of the Belgian Act of May 24, 1921 guaranteeing freedom of association states that "any person who, with intent to attack freedom of association, makes the conclusion, the execution or (even with due regard to customary notice) the continuance of a contract of work or service conditional upon the affiliation or nonaffiliation of one or more persons to an association" shall be punished by imprisonment from 1 week to 1 month and a fine of 50 to 500 francs, or by one of these penalties.

In the examples mentioned above, legislation specifically prohibits and in some cases provides penalties for the comparatively rare case of infringement of the right of association by means of the contract of employment. There are other laws which extend the notion of infringement of the right of association to measures—and these are much more frequent in actual practice—which aim at restricting the worker's freedom of association after he has been engaged.

The Australian Federal Conciliation and Arbitration Act may be mentioned as an example of particularly comprehensive regulations of this kind.

Section 9 of the act states that "an employer shall not dismiss an employee, or injure him in his employment, or alter his position to his prejudice, by reason of the circumstance that the employee (*a*) is an officer or member of an organization * * * or (*b*) is entitled to the benefit of an industrial agreement or an award; or (*c*) has appeared as a witness, or has given any evidence, in a proceeding under this act; or (*d*) being a member of an organization which is seeking better industrial conditions, is dissatisfied with his conditions. Penalty—fifty pounds." Here the mere threat of discrimination against a worker for one of the reasons mentioned in the section is treated as an infringment of freedom of association.

PROTECTION OF THE RIGHT OF ASSOCIATION OF TRADE-UNIONS

The problem of the right of association of trade-unions does not, of course, arise in those countries where the trade-union movement is strongly developed, unified, and centralized, and where, in consequence, the collective regulation of conditions of employment is in practice, owing to the force of circumstances, in the hands of the trade-unions. Besides, in many countries the central employers' and workers' associations have concluded real "treaties of mutual recognition," which have subsequently been confirmed and sanctioned by law.

Reference may be made in this connection to the national agreements concluded between the employers' and workers' organizations of the Scandinavian countries: The "Concordat of September 5, 1899" in Denmark, the "Compromise of December, 1906" in Sweden, and the "National Agreement of March 9, 1935" in Norway, under which the parties agree to place the organization of collective relations, including conclusion of collective agreements, settlement of disputes, conciliation, and arbitration, etc., under the supervision of the central employers' and workers' organizations. It should further be noted that in each of the countries in question the agreements have been recognized by legislation or judicial practice, so that they possess the validity of law. This is *a fortiori* the case in countries where the recognized industrial associations enjoy a legal monopoly of organization and consequently of the settlement of collective labor conditions.

In many countries, however, where these conditions of law or practice do not exist, there are special legislative measures protecting the right of association of trades unions.

It is interesting to note that provisions of this kind have been included in an international treaty, the German-Polish Convention of May 15, 1922, concerning Upper Silesia, which is still in force. Section 161 of the Convention states that—

(1) Admission to a trade union may not be conditional on the workers belonging to a particular undertaking.
(2) Employers may not be members of a trade union.
(3) Trade unions are not allowed to accept subsidies or other assistance from an employer.
(4) The defense of the occupational interests of the members of a trade union must not be subject to any outside pressure.

The same problem has arisen in the United States, and has been dealt with there in a particularly characteristic way. Taking as a basis the idea that the principles of fair competition must be observed not merely in economic relations but also—and indeed even more—in industrial relations, the act of July 5, 1935, concerning national labor relations assimilates the following acts to "unfair labor practice," and accordingly prohibits them:

(1) To interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.
(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization.

Nevertheless, an employer may make an agreement with the workers' organization which is the most representative as defined in the act, that the engagement of workers may be made conditional on their being members of the contracting workers' organization.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act.

(5) To refuse to bargain collectively with the representatives of the employees.

These are some examples of definitions of the notion of infringement of the right of association in relation not to the individual wage earner but to the trade-union itself.

Some examples are given below of the means used by legislation to insure the supervision and enforcement of the measure referred to and the imposition of penalties.

SUPERVISION OF, AND PENALTIES FOR, INFRINGEMENTS OF THE RIGHT OF ASSOCIATION

In Australia the industrial arbitration courts, and in the United States the National Labor Relations Board specially set up for the purpose, are entrusted with the enforcement of the measures for the protection of trade-unions and with the duty of imposing penalties for offenses.

The most effective form of supervision is, of course, that which is carried out in the place of work itself by means of staff committees set up in accordance with law or collective agreement.

It may be mentioned by way of example that under section 3 of the Czechoslovak Act of August 12, 1921, concerning works committees (there were similar provisions in sec. 84, par. 1, of the German Act of Feb. 4, 1920, and sec. 3, par. 9, of the Austrian Act of May 15, 1919, dealing with the same subject), it is one of the duties of the works committees to submit a protest to the arbitration board whenever a worker or salaried employee was obviously dismissed on account of his membership or nonmembership of a political or industrial, national or religious organization, or on account of any political or industrial, national or religious activities not connected with his activities in the works. The arbitration board may decide that the employer must either take back the worker or salaried employee into employment on the previous conditions and at the same time pay him compensation for loss of earnings during the interval, or procure him other employment in the same occupation and in the same district with approximately equal remuneration, or give him from one to four times his weekly wage as a leaving grant, the exact amount of which is fixed by the arbitration board.

All acts dealing with the subject naturally impose civil penalties for the infringement of the right of association. A contract which requires a worker to refrain from membership of a trade union is null and void; compensation must be paid for damage caused, and so on. Some acts, however, go further and reinforce the civil guarantee by the penalties of fine or imprisonment.

Apart from questions of supervision and penalties, there is another problem dealt with in the relevant legislation—namely, on which of

the parties the onus of proof is to rest in case of infringement of the right of association.

In accordance with the usual legal position as regards the onus of proof, it is for the plaintiff—who in this case is the worker—to prove that the dismissal or discrimination used against him is solely due to reasons connected with membership of a trade union or with his contract. Obviously, however, it is only in quite exceptional cases that the worker can furnish such a proof, and there is therefore danger that the protection of the right of association may be inoperative in practice. For this reason some legislations have not hesitated to reverse the position as regards the onus of proof. For example, section 9, paragraph 4, of the Australian Federal Conciliation and Arbitration Act—and there is a similar provision in the laws of the separate States and of New Zealand—lays down that in any proceeding for an offense against freedom of association, if all the facts and circumstances constituting the offense other than the reason for the defendant's action are proved, it shall lie upon the defendant to prove that he was not actuated by the reason alleged in the charge.

CONCLUSION AND METHOD OF REGULATION

It will be seen from this brief summary of the law and practice that any proposed international regulations on the protection of the workers' right of association might deal successively or simultaneously with the following questions:

1. Protection of the right of association of individual workers, including: (a) Prohibition of contracts of employment making employment conditional on nonmembership of a trade union; (b) prohibition of any other form of discrimination against workers who are members of trade unions.

2. Protection of the right of association of trade unions, including: (a) Prohibition of material or moral pressure by employers on trade unions; (b) prohibition of works unions; and possibly, (c) obligation to recognize trade unions for the purpose of the conclusion of collective agreements.

3. Enforcement of, and penalties for breach of protective measures, including: (a) Measures of supervision; (b) competent authorities; (c) civil or penal sanctions; (d) change of the usual position as regards the onus of proof in favor of the plaintiff.

In view of the complex nature of the problem, the best method of dealing with it would perhaps be to proceed by successive stages, the first of which would be the guaranteeing of the right of association of individual workers. It would appear that a future draft for a convention on this subject would be unlikely to encounter serious difficulties owing to the fact that contracts requiring a worker not to be a member of a trade union, as well as all other forms of discrimination are already prohibited either by ordinary law or by specific legal provisions.

Rank of iron and steel industry—1933 [1]

Industry	Wage earners	Rank	Value of product	Rank
Cotton goods	379,445	1	$861,170,000	--------
Steel works and rolling-mill products	276,847	2	1,143,889,000	([2]) 3
Blast-furnace products	12,098	--------	213,685,000	--------
	288,945	--------	1,357,574,000	--------

[1] Board's exhibit 17 (R. 239).
[2] Value of products in the meat-packing industry is $1,490,085,000; in the petroleum-refining industry, $1,378,637,000.

Source: U. S. Census of Manufactures, 1933.

Plants and employment in the iron and steel industry—1899–1933 [1]

Year	Blast furnaces		Steel works and rolling mills	
	Number of establishments	Number of wage earners	Number of establishments	Number of wage earners
1899	223	39,241	445	183,249
1904	190	35,078	415	207,562
1909	208	38,429	446	240,076
1914	160	29,356	427	248,716
1919	195	41,660	500	375,088
1921	134	18,698	494	235,515
1923	169	36,712	489	388,201
1925	122	29,188	473	370,726
1927	116	27,958	486	361,312
1929	105	24,960	486	394,574
1931	80	13,572	446	264,634
1933	72	12,098	394	276,847

[1] Board's exhibit 18 (R. 239).

Sources: U. S. Biennial Census of Manufacturers, 1931, pp. 785, 829; U. S. Census of Manufacturers, 1933 summary.

Percent of total United States iron ore produced in Ohio and Pennsylvania compared to production in the Lake Superior district, 1850–1934 [1]

Year	Ohio	Pennsylvania	Lake Superior
1850	9.00	55.50	----------
1860	12.06	56.50	----------
1870	11.61	44.00	----------
1880	6.51	26.00	----------
1890	1.89	10.70	55.77
1900	.22	3.18	74.63
1906	.03	----------	79.32
1910	.039	1.29	81.26
1915	.006	.65	84.54
1920	----------	1.09	85.59
1925	----------	1.58	84.09
1930	----------	1.62	84.55
1934	----------	2.13	85.53

[1] Board's exhibit 20 (R. 253).

Sources: Ohio and Pennsylvania, Iron Age, June 20, 1935, p. 21. Figures compiled from reports by U.S. Census, U. S. Bureau of Mines, and American Iron & Steel Institute.
Lake Superior: U. S. Shipping Board, Transportation on the Great Lakes, 1930 revision, p. 248; 1930 and 1934 percentages on basis of reports in Minerals Yearbook, 1935, U. S. Bureau of Mines.

Movement of iron ore from the Lake Superior region, 1934[1]

[Gross tons]

Shipments from ranges (for Lake movement):	
Mesabi	14, 774, 667
Gogebie	2, 263, 896
Menominee	1, 317, 445
Marquette	2, 396, 339
Cuyuna	497, 478
Vermillion	777, 230
Total	22, 027, 055
Lake shipments from:	
Superior	6, 996, 206
Duluth	6, 015, 630
Two Harbors	3, 199, 695
Ashland	2, 286, 766
Marquette	2, 207, 566
Escanaba	1, 543, 737
Total	22, 249, 600
Detroit & Lake Ontario receipts:	
Detroit	790, 709
Port Colborne	65, 033
Hamilton	420, 554
Total	1, 276, 296
Lake Michigan receipts:	
Indiana Harbor	1, 349, 426
South Chicago	2, 173, 923
Gary	1, 599, 068
Total	5, 122, 417
Lake Erie receipts:	
Toledo	784, 442
Huron	396, 321
Lorain	2, 106, 963
Cleveland	4, 035, 905
Fairport	678, 722
Ashtabula	1, 742, 708
Conneaut	3, 294, 610
Erie	902, 533
Buffalo	1, 565, 286
Total	15, 507, 472
Reshipments from Lake Erie Ports:	
Pittsburgh	5, 300, 000
Valleys	3, 100, 000
Buffalo	1, 600, 000
Steubenville	1, 600, 000
Cleveland	1, 300, 000
Lorain	900, 000
Johnstown	400, 000
Toledo	400, 000
Canton	200, 000
Trenton	200, 000
Hamilton	200, 000
Jackson	100, 000
Portsmouth	100, 000
Wheeling	100, 000
Columbus	10, 000
Eastern Pennsylvania	4, 000
Detroit	3, 000
Miscellaneous	17, 000
Total	15, 534, 000

[1] Board's exhibit 21 (R. 253).

Sources—Lake shipments: Annual report of Lake Carriers' Assn., 1934, pp. 61–66. Inland shipments: Steel, June 17, 1935, p. 25, compiled by Lake Superior Iron Ore Assn.

Relation of iron-ore shipments to production and manufacture of pig-iron and steel ingots—1934 [1]

State	Iron ore shipped from mines		Domestic iron ore consumed		Pig iron produced		Bessemer steel ingots and castings manufactured		Open-hearth steel ingots and castings manufactured	
	Gross tons	Percent	Gross tons	Percent	Gross tons	Percent	Gross tons	Percent	Gross tons	Percent
Alabama	2,720,923	10.6	2,760,187	11.0	1,171,650	7.5				
California	16,333	.1								
Georgia	1,098	(2)								
Illinois			2,058,098	8.2	1,269,154	8.1	299,157	13.8	1,642,437	7.0
Indiana			2,701,482	10.7	1,563,350	10.0			3,098,343	13.2
Kentucky			212,308	.8	169,290	1.1				
Maryland			(3)		704,850	4.5				
Michigan	5,497,953	21.3	959,396	3.8	621,187	4.0				
Minnesota	15,768,418	61.1								
Missouri	4,154	(2)								
New Jersey	145,326	.6							1,086,189	4.6
New York	235,025	.9	1,787,989	7.1	1,062,820	6.8				
Ohio			6,887,610	27.4	4,207,944	26.8	1,017,629	47.1	5,649,785	24.0
Pennsylvania	524,657	2.0	6,659,375	26.4	4,244,566	27.0	570,817	26.4	6,390,342	27.1
Tennessee	3,040	(2)								
Utah	161,009	.6								
Virginia	297	(2)								
Washington	1,920	(2)								
West Virginia			727,092	2.9	444,824	2.8				
Wisconsin	595,891	2.3								
Wyoming	116,592	.5								
Undistributed			420,288	1.7	226,807	1.4	274,754	12.7	5,664,009	24.1
Total	25,792,006	100.0	25,173,825	100.0	15,686,442	100.0	2,162,357	100.0	23,531,105	100.0

[1] Board's exhibit 22 (R. 253).
[2] Less than one-tenth percent.
[3] Maryland consumes 972,555 tons of imported ores exclusively, out of a total United States consumption of 1,314,623 tons of foreign ores.

Source: U. S. Bureau of Mines, Minerals Yearbook, 1935, pp. 393, 398, 415, 416.

Interstate movement of coal used in byproduct coke production, [1] *1933*

[Millions of short tons]

State	Coal used	Coal from within State
Alabama	2.5	2.5
Colorado	.2	.2
Illinois	2.3	0
Indiana	2.9	0
Maryland	1.0	0
Massachusetts	1.5	0
Michigan	3.2	0
Minnesota	.6	0
New Jersey	1.2	0
New York	5.0	0
Ohio	5.2	0
Pennsylvania	9.3	7.5
Tennessee	.1	.1
Utah	.1	.1
Washington	.1	.1
West Virginia	1.6	.5
Connecticut, Kentucky, Missouri, Rhode Island, Wisconsin	2.1	.2
All other	.6	0
Total	39.5	11.2

[1] Board's exhibit 23 (R. 254).

Source: U. S. Bureau of Mines, Minerals Yearbook, 1934.

Byproduct coke produced and sold or used by producer, by States, in 1934 [1]

[Net tons]

State	Produced	Used by producer in blast furnace, etc.[2]	Sold				
			Furnace [3]	Foundry	Domestic use	Industrial and other use [4]	Total
Alabama	2,109,192	1,489,468	8,496	256,176	361,229	18,533	644,454
Colorado	171,104	149,791	2,936	14,966	1,172	----------	19,074
Illinois	1,649,907	425,371	391	94,678	1,025,128	57,545	1,177,742
Indiana	2,613,437	2,136,283	3,127	86,635	360,731	16,408	466,901
Maryland	784,539	685,877	----------	----------	66	99,017	99,083
Massachusetts	1,127,632	83,402	22,177	33,030	859,291	13,730	928,228
Michigan	2,547,747	429,260	(5)	825	1,750,359	(5)	2,111,292
Minnesota	417,447	242	----------	167	390,380	(5)	393,696
New Jersey	910,121	77,940	----------	23,819	536,781	262,333	822,933
New York	4,089,708	911,125	(5)	(5)	1,883,792	367,980	3,080,020
Ohio	4,296,338	2,955,710	150,303	198,564	733,143	215,547	1,297,557
Pennsylvania	6,834,362	4,839,374	660,952	97,112	847,055	230,098	1,835,217
Tennessee	70,598	10,019	----------	15,215	31,993	8,473	55,681
Utah	117,401	75,333	34,015	----------	5,184	2,617	41,816
Washington	27,199	16,372	----------	800	9,666	300	10,766
West Virginia	1,343,914	925,743	----------	(5)	294,780	(5)	346,733
Connecticut, Kentucky, Rhode Island, Missouri, and Wisconsin	1,682,165	101,825	81,880	188,575	1,083,364	160,253	1,514,072
Undistributed	----------	----------	1,056,175	66,654	----------	120,629	----------
Grand total, 1934	30,792,811	15,313,135	2,020,452	1,077,216	10,174,114	1,573,483	14,845,265
At merchant plants	11,550,961	1,256,184	626,033	742,073	7,238,296	1,214,376	9,820,778
At furnace plants	19,241,850	14,056,951	1,394,419	335,143	2,935,818	359,107	5,024,487

[1] Board's exhibit 24 (R. 254).
[2] Includes 1,476,500 tons used for other purposes than in blast furnaces.
[3] Includes 1,067,847 tons sold to affiliated corporations; remainder reported as merchant sales.
[4] Includes 587,438 tons sold for manufacture of water gas.
[5] Included under "undistributed."

Source: U. S. Bureau of Mines, Minerals Yearbook, 1935, p. 673.

Distribution of steel to consuming groups, 1934 [1]

	Percent	Gross tons		Percent	Gross tons
Automotive	20.87	3,775,833	Oil, gas, water	4.97	899,181
Railroads	12.96	2,344,744	Machinery	3.65	660,364
Buildings	12.70	2,297,703	All other	30.88	5,586,860
Containers	8.68	1,570,400			
Exports	5.29	957,075	Total	100.00	18,092,160

[1] Board's exhibit 25 (R. 262)

Source: Steel, Jan. 7, 1935, p. 112.

Production and distribution of motor vehicles in the United States, by States, in 1933 [1]

States	Production [2]			Retail distribution [2]		
	Number of establishments	Number of employees [3]	Value of products (amount in thousands of dollars)	Number of agencies	Number of employees [4]	Sales (amount in thousands of dollars)
United States	823	272,329	1,858,171	30,646	203,357	2,127,720
Alabama	4	62	226	259	2,436	23,278
Arizona	1	(5)	(5)	96	640	6,358
Arkansas	----------	----------	----------	252	2,037	18,546
California	65	4,173	55,882	1,935	14,557	166,933
Colorado	8	[6] 78	[6] 172	378	2,409	22,483
Connecticut	11	228	609	466	3,348	36,206
Delaware	2	(5)	(5)	74	588	6,137

Footnotes at end of table.

Production [1] *and distribution of motor vehicles in the United States, by States, in 1933*—Continued

States	Production [2]			Retail distribution [2a]		
	Number of establishments	Number of employees [3]	Value of products (amount in thousands of dollars)	Number of agencies	Number of employees [4]	Sales (amount in thousands of dollars)
District of Columbia				63	1,799	20,265
Florida	2	(5)	(5)	388	3,123	29,883
Georgia	6	(5)	(5)	445	3,450	34,129
Idaho				165	902	9,168
Illinois	78	[6] 4,707	[6] 15,285	1,825	11,885	122,162
Indiana	50	17,817	79,494	993	5,636	53,942
Iowa	11	187	580	1,046	4,639	42,401
Kansas	2	(5)	(5)	794	3,747	33,644
Kentucky	6	[6] 184	[6] 797	507	3,087	26,440
Louisiana	4	(5)	(5)	265	2,835	25,016
Maine	1	(5)	(5)	336	1,796	18,974
Maryland	5	[6] 76	[6] 175	376	3,036	29,888
Massachusetts	28	[6] 582	[6] 1,823	968	7,318	82,544
Michigan	123	165,839	1,084,858	1,400	9,497	103,305
Minnesota	15	250	1,279	924	4,858	44.665
Mississippi	1	(5)	(5)	276	1,934	16,572
Missouri	19	(5)	(5)	955	6,647	70,884
Montana				216	1,187	12,890
Nebraska	6	[6] 38	[6] 76	617	2,937	26,617
Nevada				44	263	2,999
New Hampshire	1	(5)	(5)	189	875	10,001
New Jersey	30	[6] 1,502	[6] 4,061	833	5,837	71,899
New Mexico				97	661	6,170
New York	106	[6] 8,489	[6] 46,174	2,196	17,771	226,720
North Carolina	5	[6] 169	[6] 332	473	3,748	41,064
North Dakota				285	1,182	11,310
Ohio	94	25,863	130,291	2,015	11,540	124,229
Oklahoma	2	(5)	(5)	582	3,985	41,223
Oregon	6	77	219	285	1,961	21,026
Pennsylvania	61	11,568	52,067	2,152	13,794	136,649
Rhode Island	3	33	84	128	1,064	13,659
South Carolina				246	1,802	19,984
South Dakota	1	(5)	(5)	273	1,001	8,933
Tennessee	4	[6] 46	[6] 159	356	2,950	30,355
Texas	14	[6] 119	[6] 263	1,496	11,084	117,208
Utah	1	(5)	(5)	113	880	8,632
Vermont				144	920	7,915
Virginia	5	(5)	(5)	508	3,798	33,983
Washington	8	[6] 149	[6] 355	467	3,459	33,049
West Virginia				362	2,276	21,555
Wisconsin	34	[6] 6,625	[6] 22,025	1,249	5,465	48,578
Wyoming				134	713	7,248
Other States [5] [6]	98	23,469	360,883			

[1] Board's exhibit 26 (R. 262).

[2] Production figures combine those for motor vehicles, and those for motor-vehicle bodies and motor-vehicle parts. Establishments engaged primarily in the manufacture of trailers are assigned to the motor-vehicle bodies and motor-vehicle parts industry, as trailers are more closely allied to the products of this industry than to those of motor vehicles.

Source: Census of Manufactures, 1933, Motor Vehicles, Motor-Vehicle Bodies and Motor-Vehicle Parts, Aircraft, etc., pp. 3, 7.

[2a] Distribution by motor-vehicle dealers (new and used). New and used car figures can not be obtained separately for 1933. (Previous census figures show that used car figures have little weight in the total.)

Source: Census of American Business, 1933, Retail Distribution, vol. II, State Summaries, pp. 5–53.

[3] Do not include proprietors and firm members, salaried officers of corporations, employees of central administrative offices. Figures given are the total for number of wage earners (average for year) and number of salaried employees, for both classifications as explained in footnote 1.

[4] Total for the annual average number of full-time and part-time employees.

[5] In these States the number of establishments was so few that all data on the number of employees and the value of products are withheld to avoid disclosing approximations of data for individual establishments. The number of establishments, although shown for each State, is included, with the data withheld, in the "Other States" totals.

[6] In these States, there were so few motor-vehicle-producing establishments that data for employment and value of products were omitted to avoid disclosing operations of individual establishments. The figures given for number of establishments are the totals for both classifications. The figures shown for number of employees and value of products are for motor-vehicle bodies and motor-vehicle parts only. The data omitted and the number of establishments reporting such data are included in the "Other States" totals.

INTERSTATE DISTRIBUTION OF IRON AND STEEL PRODUCTS FOR ALL MILLS WITHIN 50 MILES OF PITTSBURGH, PA.[1]

[Sample study for 3 months ending June 30, 1934]

Total distribution for 1,531,000 net tons of code products representing approximately 20% of the national total.

Shipments from the Pittsburgh district

[In thousands of net tons]

Pennsylvania	517
New England	51
New York	161
Maryland	41
Delaware and District of Columbia	3
Virginia	24
West Virginia	10
Ohio	228
Michigan	138
Indiana	23
Illinois	67
Kentucky	15
Wisconsin	4
South Eastern States	11
North Central States	41
South Central States	137
Mountain States	8
Pacific States	43
Total shown	1,522

[1] Board's exhibit 28 (R. 266).

Source: Supplement No. 1, N. R. A. Report—Operation of the Basing Point System, Nov. 30, 1934.

LABOR POLICY IN THE STEEL INDUSTRY

STEEL LABOR POLICY AND ESPIONAGE[37]

Steel labor policy, enforced with espionage, was laid down in 1892. Government investigation at that time noticed the espionage. The policy continues to date. The policy was fixed by what the trade press of the industry still refers to as "the leading interest" or "the dominant producer", meaning the United States Steel Corporation. Its nucleus was the Carnegie Steel Co. Its labor policy originated in the Homestead strike of 1892, and was made effective by professional espionage and privately armed strikebreaking, and the use of troops.

At that time the agency hired by Carnegie Steel was the Pinkerton Detective Agency. A senatorial committee's investigation found the Pinkerton espionage to be "an utterly vicious system * * * responsible for much of the ill feeling displayed by the working classes."

ATTITUDE TOWARD UNION LABOR

This general steel labor policy found more formal enunciation when the United States Steel Corporation was formed. On June 17, 1901, the corporation's executive committee passed a resolution:

> That we are unalterably opposed to any extension of union labor, and advise subsidiary companies to take a firm position when these questions come up and say they are not going to recognize it; that is, any extension of unions in mills where they do not now exist; that great care should be used to prevent trouble and that they promptly report and confer with this corporation.

"Any extension" referred to the fact that the union (the Amalgamated Association of Iron, Steel and Tin Workers) had survived the Homestead strike in a percentage of the older mills. The new corporation was expanding with new mills and so was in a position to be rid of unionism by obsolescence. The formal resolution signified that a central policy in labor matters was to control subsidiaries.

After "trouble" did occur, the corporation installed "welfare work" in 1911, and its policy was reiterated April 15, 1912, in a "report of committee of stockholders" which under the heading "Repression of the Men" said that if the term "repression of workmen" involved "the question as to what measure the corporation should adopt for the suppression of organizations that in the past have, at times, proved irresponsible and incapable of self-control", then the committee advises that "we do believe * * * that the Steel Corporation, in view of the practices often pursued by labor organization in steel mills in past years, is justified in the position it has taken."

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[37] Board's exhibit 38 (R. 697).

ESPIONAGE

The connection of the dominant policy with detectives and espionage has been continuous. Formal denials have been periodic, with an exception in 1919, when Chairman Gary, of the United States Steel Corporation, testified before a Senate committee (Senate committee testimony, vol. 1, p. 177).

Senator WALSH. Have you a secret-service organization among your employees at any of the subsidiary plants of the Steel Corporation?

Mr. GARY. Well, Senator, I cannot be very specific about that but I am quite sure that at times some of our people have used secret service men to ascertain facts and conditions.

In 1920 a more sweeping statement was contained in a clergyman's pamphlet prefaced by a commendatory letter from Mr. Gary, and circulated to the number of 1,200,000 copies by the Steel Corporation: "Does anyone doubt the wisdom, justice, and necessity of a spy system on the part of the United States Steel Corporation in sheer self-defense?"

At a stockholders' meeting in 1934, Chairman Taylor said, "I don't know what you mean" in answer to a question about espionage. In 1936, spies were still being hired in the corporation's mills.

Denial of the maintenance of espionage and of the hiring of labor detective agencies has been part of the dominant steel policy.

Following are excerpts from the United States Steel Corporation executive committee's minutes for the period of 1901, as published by the Senate (S. Doc. 110, vol. III, pp. 497–506, 1901) and reprinted in Report on the Steel Strike of 1919, by the Commission of Inquiry, Interchurch World Movement, 1920, p. 201, et seq.:

April 20, 1901.

Mr. Edenborn thinks it expedient to inform the newspapers and the public generally that the United States Steel Corporation is not the one employer, but that the *individual companies are distinct and separate for themselves.*[38] that the labor troubles of any one company must be settled by that particular company as an individual company, and a strike in one must be settled independently of any other company.

Attention was called to the fact that certain newspapers seem to publish any and everything that will create sufficient sentiment to influence newspaper sales; that we ought to do all we reasonably can to keep public sentiment right and the facts before the public. It was the opinion of one member that he would like to have the workmen understand that *we do not purpose to allow them to run our mills*, but that we do purpose always to treat the men fairly as individuals and give them good, liberal wages.

At the close of this whole discussion it was decided that the sense of this committee is that the general policy should be to *temporize* for the next 6 months or year until we get fully established, and that the prevalent conditions of labor and labor unions at the different plants should be undisturbed, and that *if any changes do occur later they can be handled individually.*

Three members of the committee have very positive ideas on the expediency of permitting any change in the labor relations now prevailing at the different plants. They insist that they believe we must accept whatever conditions now exist at our plants; that *it is not wise at this time to institute any change ourselves;* that any attempt on the part of anyone else to bring about an alteration in a certain direction should be *promptly discouraged by the ordinary means;* that if it is found and desired that *changes be brought about later by our companies* they can be done when business reasons would permit. Those gentlemen further maintain that long experience in these matters has taught them that if certain situations which naturally arise from time to time be

[38] Italics are the Commission's.

not quickly disposed of on the spot with a firm hand, *you will then witness the beginning of the end.*

They favored the prompt reporting here of any trouble and stated that matters that were serious or are likely to cause trouble should be handled upon the advice of this committee. They do not approve of the local manager attempting to decide any and all questions of this kind that may arise at the plant, but these small affairs that require nipping in the bud should be disposed of by him and then reported here.

One gentleman thinks this whole question is so big and grave in its possible effect to the United States Steel Corporation that we ought to proceed with great caution and if necessary consult with some of our associates on the subject.

He believes that *it would be a great mistake if it were understood we had adopted a policy of antagonism;* that the effect might be disastrous; that we must not lose sight of the financial interests of the corporation and must endeavor to keep clear of anything that might be prejudicial to these interests.

June 17, 1901.

The next question is, Should we establish a rule and announce that rule to presidents, viz, that they are authorized to take up the question and dispose of it promptly on the basis that under no circumstances will any union be recognized where there are no unions? * * * It has been suggested in this committee that when that question comes up, the president of the subsidiary company should reply that he wished to consider and would make answer the next day, and in the meantime could take it up with the president of this company, and then finally report to the representative that the matter had been carefully considered and the decision reached is so and so.

To this last proposition the president commented that it would then be perfectly clear that such president had taken it up with this corporation.

Mr. Converse feels * * * that public opinion would be with us inasmuch as we had not attempted to crush unions, but had simply accepted the various situations as they were; that we had left the management at the individual plants just as heretofore and advised the local officers to use their judgment. He pointed out that we are assured by certain presidents that they can run everything in their nonunion plants.

(The following lines in the minutes occur immediately after an expression by the one member of the finance committee expressing any toleration for unions.)[39]

The president informs the committee that there is in the air a well-defined feeling that the corporation is indifferent as to fighting the extension of the labor unions.

(The situation before the Board on June 17, 1901, was the threat of a strike by the Amalgamated Association of Iron, Steel and Tin Workers. In this the labor union for the first time grappled with the new conditions of consolidation brought about by the formation of the Steel Corporation. This association had agreements in about one-third of the corporation's mills.)

Mr. Converse put this proposition that as a matter of fact it is not a question of financing the situation except up to a certain point; that the very worst the association can do is with about 33⅓ percent, and he believes it will not do it with that low percentage; that if our president says to the presidents that they will please understand that the United States Steel Corporation is a large financial institution and it expects you to go ahead now and handle this situation just exactly as if the United States Steel Corporation did not exist, *they will be very careful not to get into trouble.*

This met the unqualified approval of the president, Mr. Steele, and Mr. Reid.

(The following from the minutes of July 2 refer to the growing threat of a strike by the Amalgamated Association and the specific statement of the understood remedy hinted at throughout the minutes.)

The chairman stated that he would be willing to concede two mills as union mills, *to sign the scale for the McKeesport mill and to keep it shut down.*

July 2, 1901.

The chairman stated that probably the men would be satisfied if they gained a point; that while it is very humiliating, nevertheless it is a critical period and we had better temporize if it can be done.

(After a decision to send representatives to confer with the Amalgamated Association.)

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[39] The explanatory parenthesized paragraphs are the Commission's.

The chairman stated that it would be clearly understood that the United States Steel Corporation has nothing whatever to do with it; that the representatives of the three subsidiary companies are *not to state that they are acting in concert, or even by consultation, with any of the officials of the United States Steel Corporation.*

The chairman explained his opinion that the men who go should be pretty big men and able men, who if necessary might be competent to decide pretty promptly what to do; they should be men with sense enough *not to be antagonistic to the views here* without full consultation with New York.

In response to an inquiry from the chairman, the president stated that he had been *assured by the head* of the financial house that he will stand by whatever action the president thinks best. The president has also stated that the junior partners expressed themselves as very anxious to have this matter settled, but did not at any time state that it should be settled.

The chairman called attention to the fact that it seems from the statements made to be clearly understood what policy ought to be pursued.

(The tense situation between the Amalgamated Association and the corporation over signing the new scale was greatly increased by the episode recorded in the minutes of July 8, 1901.)

The president reported that the superintendent of the Wellsville sheet mill down on the Ohio River had *discharged 12 men who were endeavoring to institute a lodge.* * * *

Mr. Edenborn believes that we have the matter well in hand and that even if we have to face a tin-plate strike we *should not give in to labor.*

The chairman stated that we all labored under the impression based on the statement of the president that we could keep so close track that we would know pretty well what the men were doing; but that if this union at McKeesport mill had been formed between last April and the time the presidents were here we did not have the information.

July 12, 1901.

Mr. Steel reported to this meeting that an informal talk over the labor situation had taken place this morning between such of the directors as could be reached at that time, and there were present Messrs. J. P. Morgan, H. H. Rogers, Robert Bacon, Abram Hewitt, Charles Steele, and the president of this company; that during this talk the whole labor situation was again gone over; * * * that it was the unanimous opinion of those present that we should say we were willing to sign the scales in all of our union mills as we had last year as submitted, but that we *refuse to negotiate with the association in any particular for the mills known as nonunion mills.*

The Commission made the following analysis of these minutes:

1. The executive committee (financiers) control absolutely the Steel Corporation's labor policy. Mr. Gary told the Senate investigating committee that this was true today.

2. The nature and extent of the executive committee's control was to be kept secret from the public and the announcement made that each subsidiary company controlled its own labor policy.

3. Opposition to labor unions by the financial control was instinctive and complete. The bases of opposition were pride and fear; e. g., "we do not purpose to allow the workmen to run our mills." "If certain situations which naturally arise be not disposed of with a firm hand, you will then witness the beginning of the end." Fear of colleagues' opinion existed, e. g., the president's reference to the feeling in the air that "the corporation is indifferent as to fighting the extension of labor unions."

4. Opposition to labor unions was to be kept secret and not avowed; e. g., "public opinion would be with us inasmuch as we had not attempted to crush labor unions but had simply accepted the various situations"; and "it would be a great mistake if it were understood that we had adopted a policy of antagonism."

5. Opposition to labor unions was to be through "the ordinary means" with final reliance on shutting down union mills where agreements had to be signed and turning the production over to the corporation's nonunion mills; e. g., "to sign the scale for McKeesport mill and to keep it shut down."

6. Subsidiary presidents and superintendents were responsible for any methods of their own, which must "not be antagonistic to the views" of New York

and which included discharge of workers for forming labor unions. Methods were questioned only when the results threatened to be "disastrous", i. e., strikes.

7. Opposition to union labor included "temporizing," "finessing" and opportunistic reliance on subordinates with concern only for "results."

RESULTS OF POLICY

Results of the corporation policy were: When formed in 1901 the corporation dealt with unions in one-third of its mills. In a few years these unions were out, and none was dealt with, as today.

ESPIONAGE TO OBTAIN RESULTS

The means used were summarized by the Commission thus (p. 209 et. seq.):

1. Discharging workmen for unionism, just as the 12 men were discharged at Wellsville in 1901 "for forming a lodge"; also the eviction of workmen from company houses and similar coercions.
2. Blacklisting strikers.
3. Systematic espionage through "under-cover men."
4. Hiring strike-breaking spies from "labor detective agencies."

"* * * Besides the stockholders' report of 1912 hitherto quoted, which 'justifies' the corporation's 'repression of the workmen' Mr. Gary made plain to the Senate investigating committee that the same ideas and the same methods held all along (p. 207).

"He told the Senate committee that 'unionism is not a good thing for employer or employee.' At the same time he declared that the corporation did not carry this belief into practice by 'opposing labor unions as such'; that no workman 'was discriminated against because he was a union man'; that the corporation did not attempt to crush unions. All this was in accord with the principles of 1901 of disclaiming the opposition, in the belief that 'it would be a great mistake *if it were understood* that we had adopted a policy of antagonism'" (pp. 207–208).

"INDEPENDENTS" FOLLOW POLICY

What the steel industry denominates "the independents" have, for the most part, followed consistently the United States Steel Corporation as above outlined. (Modifications turned chiefly on company unions.) Records concerning one "independent", the Jones & Laughlin Co., may be cited as an illustration.

The first of these records deals with "agitating in the mill" and espionage. (A common formula concerning discharges in steel, *e. g.*, as stated by President Buffington of Illinois Steel in 1920, runs: "We don't discharge a man for belonging to a union, but of course we discharge men for agitating in the mills"—Interchurch Report on Steel Strike of 1919, p. 210):

"Agitating in the mill" may include the mail a man receives at his home. At the Jones & Laughlin plant in Woodlawn, Pa., one department had 24 Finns. Finns are known as especially intelligent workmen and especially likely to join unions. In February 1919 the plant management learned that these Finns were visiting a great deal with each other at night, meeting in the cellars of their own houses. Finally it was observed that the Finns seemed to be getting more mail than the other "foreigners", including newspapers and pamphlets. The 24 were called up one morning and fired without explanation. In September 1919 the plant management were congratulating themselves: They observed in the list of union workers deported by plant guards from Weirton the names of some of their Finns. The plant had "spotted 'em all right" (Interchurch Report, p. 212).

In the case of another "independent" the connection between discharge and espionage was indicated by a spy report, produced from the "labor file" of another steel company in Monessen, Pa. (Cited in Interchurch Report, p. 212 et seq., as follows:)

* * * The paper was the report of a spy, plainly inside the union, and contained a list of names which were referred to in a letter, also in the file, from a labor detective agency. The appearance of the paper with the first five names crossed out, was as follows:

"MONONGAHELA LODGE NO. 127, PA.

"The employees of the Page Steel & Wire Fence Co., Monessen, Pa., have formed a strong lodge of the A. A. Organizer M. E. Donehue acted as master of ceremonies in instituting this new addition. The officers of Monongahela Lodge No. 127, Pa., are (names follow)."

It is the Capuan punishment principle—strike off the heads of the leaders. The "examples" will take care of the rest of the would-be unionists.

ESPIONAGE AND BLACKLISTING

Discharge and blacklisting, for union activity, are well recognized as the primary aim, and result, of steel companies' use of espionage and detective agencies. To blacklist effectively spies are necessary. The following examples of espionage were from the "labor file", including some 600 spy reports, of a steel company in Monessen, Pa., as taken from the Interchurch Report (pp. 219–221):

Blacklist as an integral part of the antiunion alternative of course are ordinarily kept by the companies. The steel plant in Monessen, however, which freely lent its "labor file" to an investigator to study, included among the detectives' reports, etc., several blacklists. To most actual plant managers, as distinguished from Mr. Gary, blacklists seem after all too common to be deeply concealed. With the lists examined by the commission are evidences of the system of intercompany exchange like the detective reports where the names of "independent" and corporation mills were mixed together.

M. Wikstrom, Gen'l Supt.
Jas. H. Dunbar, Ass't to Gen'l Supt.

PITTSBURGH STEEL PRODUCTS CO.,
MILL OFFICE,
Monessen, Pa., November 7, 1919.

GEORGE A. PAFF,
Supt., Page Steel and Wire Co., Monessen, Pa.

DEAR SIR: Attached hereto is list of former employees who have failed to return to work in our plant.

This list is forwarded to you so that proper action can be taken—should they apply for employment at your plant.

We would ask that you kindly consider this as confidential.

Yours very truly,

PITTSBURGH STEEL PRODUCTS CO.,
(Signed) M. WIKSTROM,
Gen'l Superintendent.

SW/F.

NOVEMBER 20, 1919.

Mr. M. WIKSTROM,
General Superintendent, Pittsburgh Steel Products Co.,
Monessen, Pa.

DEAR MR. WIKSTROM: In compliance with your request, we are submitting herewith a complete list of our employees who have not as yet returned to work.

Naturally, we expect to reemploy the larger portion of these men, although we have underscored the names of some radicals who, I believe, nobody would want around a plant.

Very truly yours,

PAGE STEEL & WIRE CO.,
General Superintendent.

GAP/M.

MONESSEN FOUNDRY & MACHINE CO.,
Monessen, Pa., November 4, 1919.

MR. GEO. PAFF,
Page Steel & Wire Co., Monessen, Pa.

DEAR SIR: We attach herewith list of former employees, who are striking for closed shop. This list is forwarded to you at this time, as we understand several of these men are applying for work at your plant.

Very truly yours,

MONESSEN FOUNDRY & MACH. CO.,
(Signed) LOUIS X. ELY,
Secretary.

LXE/CH.
Copy to PMW 11/15.

It is a regular system; "in compliance with your request." It is secret; "consider confidential." It is disingenuous; "striking for closed shop." The attached lists, principally "hunkies", run from 50 to 200 names apiece.

INTERCHURCH WORLD MOVEMENT INVESTIGATION INTO THE STEEL STRIKE OF 1919 [40]

A fully documented report of industrial espionage and under-cover agencies in the steel industry was included in the investigation conducted by an independent commission of inquiry for the Interchurch World Movement in 1919–20. Their report is published in two volumes entitled, "Report on the Steel Strike of 1919", and "Public Opinion and the Steel Strike."

The Commission, headed by Bishop Francis J. McConnell, consisting of eminent clergymen and laymen, was authorized to investigate industrial unrest in general and the steel strike of 1919 in particular. With the technical assistance of industrial relations specialists the commission conducted partly through public hearings a field investigation lasting several months. No attempt was ever made to refute the commission's findings in regard to espionage.

The Commission found that the labor-relations policy of the steel industry was directed to keeping out unionism. In pursuit of this policy, blacklists were used, workmen were discharged for union affiliation, under-cover men and labor detectives were employed.

The commission recommended:

Inasmuch as—

(a) The conduct and activities of "labor-detective" agencies do not seem to serve the best interests of the country; and

(b) The Federal Department of Justice seems to have placed undue reliance on cooperation with corporations' secret services, therefore,

It is recommended—

(a) That the Federal Government institute investigation for the purpose of regulating labor-detective agencies; and for the purpose of publishing what Government departments or public moneys are utilized to cooperate with company under-cover men.

The Interchurch report's findings were based on analysis of some 600 labor-spy reports furnished to their investigators by the steel companies, on interviews with officials of under-cover agencies and on other evidence which had been put in the hands of local government authorities. The Commission in one instance found itself the victim of spy reports. The report states:

It was not the original intention of the Interchurch Commission to gather evidence on the widespread charges of company-spy systems, industrial espio-

[40] Board's exhibit 40 (R. 699).

nage, etc. Steel workers and their spokesmen asserted that such spy systems were the ever-present instruments resulting in an ever-present fear—some workers called it "terrorization"—evident among the rank and file of steel workers. For one thing, it would have seemed impossible to get such secret evidence. For another thing, the commission doubted its importance. But it became apparent that some officials of some steel companies were so accustomed to look upon their secret-service reports as the basis on which their, or any company's, labor policy would have to be formed, that they showed no hesitancy in producing information about them from their secret files.

The commission's investigators, asking the officers of a company in the Pittsburgh district for information concerning their machinery for ascertaining their workers' needs, encountered this: Bring in the labor file. The labor file, this company's basis for a labor policy, consisted of the secret-service reports of various detectives and of labor agencies. Here were hundreds of misspelled reports of under-cover men, operatives X, Y, and Z, contracts for their services, official letters exchanged between companies giving lists of strikers, commonly known as blacklists. In some instances original pencilled scraps of paper contained secret denunciations of workers, which denunciations, raised to the dignity of typed documents, were then circulated to other companies and even to the Federal Department of Justice. The names of independent concerns and of subsidiary companies of the Steel Corporation appear on letterheads showing how this information or misinformation was passed along.

In Chicago one labor-detective agency had operatives at work during the strike in the South Chicago district, where a subsidiary of the Steel Corporation and independents have plants. This concern was investigated by agents of the War Department, its offices were raided by the State's attorney and one of its responsible heads was indicted for intent to kill and murder divers large numbers of persons and to create riots. A published statement that these operatives had been employed in behalf of the Steel Corporation among others was put before the president of the Illinois Steel Co., the corporation's big Chicago-Gary subsidiary, who declared it untrue. The statement was put before the head of the raided concern who declared that his operatives were working for the Illinois Steel Co.

The commission of inquiry had not expected to ask Mr. Gary whether the head of the United States Steel Corporation made use of such detectives' reports. However, one such report, received by Mr. Gary, was produced by him. This document dealt with the present investigation of the steel strike, the activities of the Interchurch World Movement and its commission of inquiry. The same curious illiteracy, characteristic of the labors of these under-cover men, characterized the report on the commission of inquiry. Mr. Gary made this document the primary subject of discussion when conferring with a committee of commissioners whose business with him was nothing less than a plan of mediation, designed to end the whole strike.

It is undeniable that labor policies in the steel industry rest in considerable part on the reports of under-cover men paid directly by the steel companies or hired from concerns popularly known as strike busters. The operatives make money by detecting unionism one day and bolshevism the next. The importance of the espionage system, as revealed by this evidence, lies in the light it sheds on the atmosphere of war normal to the steel industry, and this atmosphere is due to the dominant policy of preventing organization among the workers, even organization for above-board study of the men's conditions of labor and thought. This state of latent warfare is now so customary that the highest company officers can consider it a matter of routine, consonant with their practice and dignity, to examine with judicial solemnity the reports of anonymous spies (pp. 27–29).

The Interchurch Commission's second volume, Public Opinion and the Steel Strike, included a section which was the first detailed analysis of labor-spy reports made in this country.

Moreover this volume records that labor-spy reports could go higher than the head of the United States Steel Corporation or the Department of Justice. They were seriously put before the United States Senate.

This was at a hearing of the Senate Committee on Labor and Education, considering a motion to issue the commission's first volume, The Steel Strike of 1919, as a Senate public document. Charges against the commission were shown at the hearing to be nothing but compilations of labor-spy reports, without foundation in fact, but circulated by manufacturers for a year.

The Interchurch's second volume, besides analyzing the 600 spy reports, gave interviews with officials of several big under-cover agencies. Excerpts from the Commission's findings read:

These are not revelations; these are the facts thinly hid in steel towns. Steel workmen in scores of towns know that spying exists but are too accustomed to it to try hard to find who the spies are (p. 2).

Collating these data with others in its possession the commission in its report on the steel strike (pp. 18, 22–29, 120, 209, 211–235) published its findings: that the existence of widespread well financed privately incorporated spy concerns constitutes an integral part of industrial corporations' policy of not dealing with labor unions; that their operatives, inside the plants or inside the unions or outside both, during that strike spied, secretly denounced, engineered raids and arrests, and incited to riot. It was a customary inevitable part of the antiunion alternative. The labor detectives bled both sides; and the Federal Government files contained their patriotic reports. The commission examined the relations between espionage and the suppression of civil liberties and Federal Governmental action; noted how even bishops were dogged by spies * * * (pp. 2–3).

War, periodically overt, generally chronic, was what the commission found in the steel industry. The commission considered this finding particularly indicated by the widespread espionage. The finding concerned not theories about the class-struggle, but facts about the actual maintenance of the open shop (p. 3).

It is impossible then to criticize the present report on under-cover men in the steel strike as an exceptional instance; instead it is a typical spadeful out of the subsoil of business enterprise. Industrial espionage is confined to America; what espionage there is in Europe is a government monopoly; no other civilized country tolerates large-scale, privately-owned labor-spying (p. 4).

Modern systems of under-cover men are of two sorts; espionage run directly by big corporations as an integral private part of the management, always at work; and labor-detective agencies, advertising their business, and called in by manufacturers during labor trouble. The first kind is not studied here in detail; this study goes into the second kind which, naturally, more steadily serves smaller companies and is called in by big corporations only to help out their own systems. But many of the operatives of the professional agencies have worked in the corporations' systems and the activities of both kinds are of one stripe. Moreover, the national conditions making possible, or necessary, the business of all these operatives are principally due to the no-conference industrial-relations policies of the great corporations. The Steel Report sets forth the consequences of spy systems; this study only tries to determine who and what the under-cover man is (pp. 4–5).

The concerns analyzed are a higher type than the old-fashioned "pinks." The modern concerns show more brains. They realize that up-to-date war relies heavily on propaganda. Their "operatives" or "representatives" (spies) are trained propagandists and are so offered for hire. For the propaganda the new concerns take their ideas—or at least their patter—from modern employment managers, from civic federations, from the spokesmen of the "open shop." Their preachments contain texts on optimistic "getting together" and "getting on" and "thrift" and self-made "success." The modern spy works like workmen, talks like workmen, whispers depressing rumors, stirs up racial spite, and argues "failure" to strikers; even in his daily mailed spy reports he advises, not so much "sluggers" as "influence" by municipal authorities to close up public meeting places (p. 5).

Why, when taxed with such practices, do great businessmen still go on hiring detectives as new "labor troubles" arise? "They must have espionage"; they believe that. They see no alternative. "Does anyone doubt the wisdom, justice, and necessity of a spy system on the part of the United States Steel

Corporation in sheer defense?" So reads an apology for the United States Steel Corporation by a New England minister, which was circulated by the corporation after the Interchurch inquiry, as a pamphlet, prefaced with a commendatory letter by Mr. E. H. Gary (pp. 5–6).

The questioning sweeps wider. Must our social organization, our civilization, be shot through with spies? The last pages of this study and the final records of the Interchurch steel investigation show the spy practice reaching out into social entities as far removed from manufacture as is the church. The record shows a spy ransacking church offices in New York; other spy reports utilized to jeopardize the whole purpose of a vast cooperative Christian enterprise; spying cloaked under the wing of a public body, the National Civic Federation, and a "report" sent by the Civic Federation's chairman to the offices of the Steel Corporation there to be weighed with others on the desk of Mr. Gary (p. 6).

The Interchurch Commission's final encounter with spying is recounted as follows:

An experience of the commission on January 27, 1921, suggests that the infection is beyond the control of those responsible for it. On that date the commissioners appeared before the Senate Committee on Labor and Education by request of the committee at a hearing in the Capitol. The Senators suddenly put before the commission a 78-page mimeographed document, a "confidential communication", which the officers of the National Association of Sheet and Tin Plate Manufacturers had formally filed against the report. It purported to be a "review and criticism" of the report, prepared by C. L. Patterson, secretary of the association's bureau of labor, and sponsored by W. S. Horner, president of the association * * * (p. 83).

The Commission's reply noted:

Let us examine the 32 pages attacking the commission. Its data are made up of secret reports sent in by spies or under-cover men. The "review" does not tell the origin of its "charges"; in all sincerity these misled manufacturers offer to the Senate the reports of spies (p. 83).

For a year past steel manufacturers have circulated secretly, in typed documents or in reprints, three separate reports by spies. We have seen these things before, forced men to apologize for them, but here they are again, as false as ever and still credited by manufacturers accustomed to relying on spies in the steel industry. On page 15 of this "review" the argument that the report is not of the commission's authorship comes to climax in a paragraph printed in capitals thus (pp. 83–84):

WILL THE INTERCHURCH WORLD MOVEMENT DENY THE STATEMENT OF THIS MAN, REV. F. M. CROUCH, THAT HE IS THE MAN WHO WROTE THE REPORT OF THE INTERCHURCH WORLD MOVEMENT ON THE STEEL STRIKE, OR THAT HE COMPILED THE REPORTS PREPARED BY THE SEVERAL INVESTIGATORS AND PRESENTED IN COMPLETED FORM TO THE COMMISSION OF INQUIRY, THE REPORT AS PUBLISHED, FOR THEIR APPROVAL? (p. 84)

Certainly the Interchurch will deny that Dr. Crouch wrote the report (p. 84). The report explains its own authorship, and if these manufacturers had any doubt they could have dropped a letter at any time in the Interchurch or the commission. What misled them into this particular solemn idiocy (p. 84)?

It was a spy document, dated March 22, 1920, forwarded by Ralph M. Easley, of the National Civic Federation to the offices of the United States Steel Corporation on March 29, 1920 * * * (p. 84).

After demolishing other inventions of labor spies put before the Senate, the report concludes:

So in the Capitol, the Senate convening overhead, the Supreme Court in session down the corridor, the commission with its recommendations on a menacing situation in the steel industry sat with the Senators and on the table between them lay—spy stuff. Certainly to be so self-pilloried was not the prime intention of American industrial leaders when embarking on business enterprise. Manufacturers were caught in that plight because their industrial spy system got out of their control (p. 85).

LIST OF EXPERTS AND THEIR QUALIFICATIONS

ABRAHAM BERGLUND.

Professor of business economics, University of Virginia. Formerly connected with Brookings Institution on study of Tariff on Iron and Steel; associated with the United States Tariff Commission, 1918–22 (R. 234–235).

EDWARD BERMAN.

Associate professor of economics, University of Illinois, in charge of studies of labor. Student of labor economics and federal intervention in labor disputes; author of "Labor Disputes and the President", Columbia University Press, 1924, "Labor and the Sherman Act", Harper & Bros., 1930, and of many articles on labor law and labor relations appearing in the leading economic and legal journals (R. 8–10).

OTTO S. BEYER.

Member, National Mediation Board. Former director, section of labor relations, Office of the Federal Coordinator of Transportation 1933–35; student and writer in the field of union-management cooperation (R. 366–368).

MORRIS A. BLACK.

Garment manufacturer. Former president, H. Black & Co.; former president, Lindner Coy.; president, Cleveland Chamber of Commerce, 1914; former president, National Women's Garment Manufacturers Association; former president, Cleveland Garment Manufacturers' Association; Impartial Chairman in International Women's Clothing Workers dispute; former member, Cleveland Regional Labor Board (R. 406–409, 428–429).

HEBER BLANKENHORN.

Industrial economist, National Labor Relations Board. Writer on subject of labor relations for about 20 years; author, "Strike for Union", Wilson Company, 1922; secretary, Commission of Inquiry into the Steel Strike of 1919, Interchurch World Movement; student of industrial espionage (R. 667–668, 674).

GLENN ALWYN BOWERS.

Director of Placement and Unemployment Insurance, New York State Department of Labor. Formerly associated with Employment Managers Group, Chamber of Commerce, Rochester, N. Y.; former assistant secretary in charge of employment management problems, Association of Commerce, St. Paul, Minn.; assistant labor manager, representing employers in adjustments under union-management cooperation, garment market, Cleveland, Ohio, 1920; director, New York Employing Printers' Association, 1920–21; associated with Industrial Relations Councilors, Inc., being its director of research, 1926–31. (R. 575–577, 588, 590).

CHARLOTTE CARR.

Director of Bureau of Women and Children, Department of Labor, State of Pennsylvania, 1925–29; Deputy Secretary of Labor, State of Pennsylvania, 1931–35; Secretary of Labor, State of Pennsylvania, 1933–35 (R. 278).

FRED C. CROXTON.

Labor Mediator for Ohio during World War; author of plan for handling labor in Ohio during World War; vice-chairman, Council of National Defense, Ohio Branch; former Federal food administrator for Ohio; former public representative, Regional Committee, Labor Relations Board; chairman, Fact Finding Board, appointed by the United States Department of Labor, in Goodyear Tire & Rubber Co. controversy (R. 436–438).

JOHN A. FITCH.

Member of faculty, New York School of Social Work. Former lecturer in economics, Columbia University and University of Minnesota; author of "Steel Workers", 1910, "The Causes of Industrial Unrest", 1924, and of series of articles on labor questions published in the Survey Magazine, 1911; former industrial editor, Survey Magazine (R. 292–294).

WILLIAM V. HARDIE.

Director, Bureau of Traffic, Interstate Commerce Commission since 1920.

HUGH L. KERWIN.

Director, Conciliation Department, United States Department of Labor, 1917 to date (R. 50–51).

JOHN A. LAPP.

Former member, Petroleum Labor Policy Board, 1934–36; former chairman, Bituminous Coal Labor Board, division 2; former secretary and director, Chicago Regional Labor Board; former member, Catholic Conference on Industrial Problems; director, Social Action Department, National Catholic Welfare Conference, 1920–27; head of Department of Social Sciences, Marquette University, 1927–32; former director, Legislative Reference Bureau of Indiana (R. 333–335).

WILLIAM M. LEISERSON.

Chairman, National Mediation Board; professor of economics, Antioch College (on leave). Former chairman, Petroleum Labor Policy Board; former secretary, National Labor Board; impartial chairman, Labor Adjustment Board, Men's Clothing Industry, Rochester, N. Y., 1919–21; impartial chairman of the Board of Arbitration, Men's Clothing Industry, New York, 1921–22; impartial chairman, Board of Arbitration, Men's Clothing Industry, Chicago, 1922–25; member of special committee, Twentieth Century Fund, studying problem of Government and Labor (R. 123–126, 148).

BASIL M. MANLY.

Vice-Chairman, Federal Power Commission. Director of research and investigation, Commission on Industrial Relations, 1913–15; co-chairman, National War Labor Board; author, "Wages and Working Conditions in the Steel Industry," 4 vols. (U. S. Bureau of Labor), 1912, report on relation of increase in prices of anthracite coal to wage adjustment in that industry, 1913 (R. 534–535, 556).

DAVID J. SAPOSS.

Chief economist, National Labor Relations Board, special investigator, United States Commission of Industrial Relations, 1913–14; expert in charge of accident prevention and industrial service work, New York State Department of Labor, 1917–18; Americanization study, Carnegie Corporation, 1918–19; head of the industrial study section, Interchurch World Movement, 1919; in charge of Labor division, Columbia University study on Post-War Social and Economic Conditions in France; Research Associate, Twentieth Century Fund; director, Company Union Study, United States Department of Labor; author, "Readings in Trade Unionism", 1927, "The French Labor Movement Since the War", 1929, and other books on labor relations; contributor to economic journals and reference works.

FERDINAND A. SILCOX.

Chief, United States Forest Service. Student of labor relations in industry since 1917; representative, Joint Commission for the United States Department of Labor and the United States Shipping Board in the Seattle shipbuilding industries dispute; former Director of Industrial Relations for the commercial branch of the printing industry of United States and Canada, representing the employers' organization (R. 472, 492, 500).

SUMNER H. SLICHTER.

Professor of business economics, Harvard University. Student of the problem of labor relations for more than 20 years; member of Twentieth Century Fund committee in charge of study of labor and the Government (R. 114–115, 117–118).

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